TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1927~~ 1933

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI

IN EQUITY

FILED MAY 19, 1925

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 9, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI

IN EQUITY

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

9, Original

THE STATE OF LOUISIANA, Complainant,

versus

THE STATE OF MISSISSIPPI

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT—May 4, 1925

Now comes the complainant, by counsel, and moves the Court for leave to file the Bill of Complaint hereto attached. Percy Saint, Attorney General of the State of Louisiana. John Dale, Counsel for Complainant.

[fol. a-2] IN THE SUPREME COURT OF THE UNITED STATES

BILL OF COMPLAINT—Filed May 19, 1925

To the Honorable William H. Taft, Chief Justice, and to the Associate Justices of the Supreme Court of the United States of America:

The State of Louisiana, one of the United States of America, by Percy Saint, its Attorney General, brings this bill of complaint against the State of Mississippi, also one of the United States of America, appearing herein through Henry L. Fuqua, Governor of said State, and Percy L. Saint, Attorney General thereof, and assistant counsel, with leave of your Honorable Court first obtained, respectfully complaining, shows unto this Honorable Court:

I

That a controversy has arisen between complainant, the said State of Louisiana, and the State of Mississippi, rela-
[fol. a-3] tive to a portion of the boundary line between

them; that no agreement can be reached between said States settling said boundary, and that it is necessary that same be determined by judgment of your Honorable Court in the exercise of its original jurisdiction.

II

That the State of Louisiana was admitted into the Union of the United States of America, by Act of Congress found in chapter 50 of the United States Statutes at Large, Vol. 2, page 701, approved April 8, 1812, and therein the boundaries of said State of Louisiana, in the preamble of said Act, were described as follows:

"Whereas, the representative of the people of all that part of the territory or country ceded under the name of 'Louisiana' by the treaty made at Paris on the 30th day of April, 1803 (8 Stat. at Large, p. 200), between the United States and France, contained within the following limits, that is to say:

1st. Beginning at the mouth of the River Sabine; thence by a line drawn along the middle of said river, including all islands to the 32nd of latitude; thence due north to the northernmost part of the 33rd degree of north latitude; thence along said parallel of latitude to the River Mississippi; thence down said river to the River Iberville; and from thence along the middle of said river to Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by said gulf to the place of beginning, * * * etc."

2nd. That by Act of Congress, found in the United States Statutes at Large, Vol. 2, p. 708, Chap. 57, approved April [fol. a-4] 14, 1812, additional territory was added to the then existing State of Louisiana, which added territory gave to the State of Louisiana all that territory south of the 31st degree of north latitude lying between the Mississippi River and the Pearl River, and extending down the Pearl River to the Gulf of Mexico, but for reasons shown it is not necessary to particularly define said additional territory.

3rd. That according to the foregoing description the eastern boundary of that portion of the State of Louisiana lying between the 33rd and 31st degrees of north latitude

was formed by the Mississippi River, beginning at the northeast corner of said State and extending in a general southerly direction to the 31st degree of north latitude, the thread, or center, of said river forming said boundary originally. That said boundary was also recognized by the Constitution of the State of Mississippi as the original western boundary of that part of the State of Mississippi between the 33rd and 31st degrees of north latitude.

III

That the Parish of East Carroll, State of Louisiana, is on the Mississippi River, between the 33rd and 31st degrees of north latitude. That said river is a navigable stream.

That in said parish there are large tracts of land known as Willow Point, and adjacent property, which is a part of the territory of the State of Louisiana.

That said original tract of land was composed of Sections 1, 2, 3, 4, 5, 6, 7, 8 and 9 in Township 19 North, Range 14 East; and also adjacent sections in Township 18 North, [fol. a-5] Ranges 13 and 14 East, situated on the Mississippi River in said parish and State.

IV

That the controversy between the said State of Louisiana and the said State of Mississippi arose from the following facts:

The land on the Mississippi River in the State of Mississippi opposite the lands on said Willow Point and adjacent properties gradually wore away by erosion, caved into the Mississippi River and disappeared, while the shore of the Mississippi River on the Louisiana side at Willow Point and adjacent properties was gradually extended in an easterly direction by accretions formed successively and imperceptibly to the soil of said shore, until it extended easterly to about the distance of approximately five miles from the original Louisiana shore.

That as the Louisiana shore of the Mississippi River was thus extended in an easterly direction by alluvion formed by accretion, the thalweg, or thread of the channel of the Mississippi River was likewise extended in an eastern direction.

That as the thread of said channel was thus extended easterly the boundary line between the States of Louisiana and Mississippi was also extended easterly in a like manner and in a like distance.

That after the boundary line between the said States had thus extended approximately five miles easterly, the Mississippi River, about 1912 and 1913, suddenly abandoned its [fol. a-6] old channel and formed a new channel by cutting same through the accretion attached to the Louisiana shore, heretofore described, said change of channel being made rapidly and violently by an avulsion cutting off some five or six thousand acres of land and leaving most of same eastward of the new channel thus made by the Mississippi River.

That at the time of said avulsion the boundary line between the said States of Louisiana and Mississippi was in and remained in the center of the old channel, which was and is east of the new channel made by avulsion.

That said old channel of the Mississippi River east of that made by said avulsion gradually filled with silt until the water ceased to flow through said old channel.

That when the water thus ceased to flow through said old channel and became stagnant, the boundary line between said States of Louisiana and Mississippi then became fixed in the middle of the old navigable channel, and was not afterward affected or changed by the filling up of said old channel, and that said line is now the boundary line between the said States of Louisiana and Mississippi, at that place, which boundary line is more definitely described as follows:

At the point to which the boundary line of 1823, between said States had been extended by accretion, being the center of the old channel or thalweg of the Mississippi River, as it became fixed by reason of the said avulsion of 1912 and [fol. a-7] 1913, shown in this complaint, and extending from a point approximately opposite Salem Landing to a point approximately opposite lower Henderson Landing as indicated on Mississippi River Commission Map published in 1916, and being Exhibit E herein, and made part hereof by reference.

V

That complainant files herewith maps and surveys, and by reference makes the same a part hereof, and they are marked exhibits, as follows:

(1) A map and survey showing T. 19, R. 13 and 14 E., Land Dist. North of Red River, State of Louisiana, surveyed February and March, 1824, by Ephraim S. Ludlow, Deputy Surveyor, and of record in the United States Land Office, at Washington, D. C., marked "Exhibit A."

(2) A map and survey showing T. 18, R. 13, Land District north of Red River in the State of Louisiana, surveyed March, 1824, by Ephraim S. Ludlow, Deputy Surveyor and of record in the United States Land Office at Washington, D. C., marked "Exhibit B."

(3) A map published by the Mississippi River Commission, originally in 1883, showing in black the position of the Mississippi River at that time; and republished in 1900 showing by red lines the shore line surveys of 1894, marked "Exhibit C."

(4) A map published by the Mississippi River Commission showing the survey of 1882 in black, and showing in [fol. a-8] red the successive changes by erosion and accretion until 1907, as determined by surveys of said commission of 1894 and 1906, shown by sheet 17 thereof, and which map shows the changes in the Mississippi River involving the territory in dispute. Marked "Exhibit D."

(5) A map published by the Mississippi River Commission, in 1916, showing the Mississippi River in the territory in controversy herein, and showing the most easterly extent to which the accretion to Louisiana shore had extended prior to the avulsion of 1912 and 1913, and showing the location of said avulsion. Marked "Exhibit E." Shown by sheet No. 17.

(6) A map published by the Mississippi River Commission showing the territory in controversy, as per survey of 1913-1915, being Chart No. 47, showing open sand bar and kind of timber on the lands, on which map was marked by a surveyor, upon request, a red line showing the thalweg of the old channel of the Mississippi River about the time of the said avulsion, which red line shows the boundary line between said States of Louisiana and Mississippi. Marked "Exhibit F."

(7) A map made by C. H. West, Consulting Engineer, Greenville, Mississippi, Dec. 22nd, 1924 (blue print, Map No. 1), showing the river banks in 1823 in the territory in dispute herein. Marked "Exhibit G."

(8) A map made by C. H. West, Consulting Engineer, Greenville, Miss., Dec. 22nd, 1924 (blue print, Map No. 2), [fol. a-9] showing the river banks in 1882, in the territory in dispute herein. Marked "Exhibit H."

(9) A map made by C. H. West, Consulting Engineer, Greenville, Mississippi, Dec. 22nd, 1924 (blue print No. 3), showing the river banks in 1894 in the territory in dispute herein. Marked "Exhibit I."

(10) A map made by C. H. West, Consulting Engineer, Greenville, Mississippi, Dec. 22nd, 1924 (blue print No. 1), showing the river banks in 1913, in the territory in dispute herein, and also showing the avulsion of 1912 and 1913, marked cutoff, which map is marked "Exhibit J."

VI

That the State of Mississippi is claiming that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps attached hereto and marked "Exhibits "A" and "B," and are claiming as Mississippi territory approximately all of the lands east of said line of 1823, which claim is without foundation in fact or law.

That the said State of Mississippi has sold lands east of said line and west of the channel of the Mississippi as it existed at the time of said avulsion of 1912 and 1913, and has issued patents therefor, as shown by certified copies of forfeited land patents Numbers 15644, 15554, 15555, 15556, 15557, 15558, 15559, 15660, 15576, 15792, made by R. D. [fol. a-10] Moore, Land Commissioner of the State of Mississippi, contained in four sheets attached together, made part hereof by reference, and marked "Exhibit K."

That the Sheriff and Tax Collector of Issaquena County, Miss., sold to the State of Mississippi on the 1st of March, 1897, for delinquent taxes for the year 1896, as shown on three sheets attached together, being certified copies made by R. D. Moore, Land Commissioner of the State of Missis-

sippi, made part hereof by reference and marked "Exhibit L."

But as a fact, all of said land is Louisiana territory, and the action of the State of Mississippi and the officials thereof in selling said land and issuing patents therefor, is illegal, null and void, and is an attempt to appropriate territory belonging to the State of Louisiana.

VII

That the sovereignty of the said State of Louisiana has thus been infringed by the State of Mississippi, and that it is necessary that the boundaries between said States at this point be determined by competent authority in order that each State may collect taxes on the property in dispute, which rightfully belongs to it, and that the territorial jurisdiction of each State should be fixed to enable each State to exercise its proper civil and criminal jurisdiction.

That Honorable Henry L. Whitfield is the Governor of the State of Mississippi and Honorable R. H. Knox is the Attorney General thereof, and the residence of each of them [fol. a-11] is in the City of Jackson, State of Mississippi.

Wherefore, being without remedy on the law side of this Court, the State of Louisiana prays that the State of Mississippi be made party defendant to this bill, and that a subpœna be issued and served upon the proper officers of said State of Mississippi, particularly Hon. Henry L. Whitfield and Hon. R. H. Knox, Attorney General thereof, and that it be required to answer the allegations hereof, but not on oath; that after all necessary orders and proceedings, there be a decree of your Honorable Court fixing and determining the boundary line between said States on the eastern part of East Carroll Parish, Louisiana, as follows:

At the point to which the boundary line of 1823, between said States had been extended by accretion, being the center of the old channel or thalweg of the Mississippi River, as it became fixed by reason of the avulsion of 1912 and 1913, shown in this complaint, and extending from a point approximately opposite Salem Landing to a point approximately opposite lower Henderson Landing, as indicated on Mississippi River Commission map published in 1916, and

being "Exhibit E," herein, and made part hereof by reference.

And to the end that the said line may be definitely located and fixed by the only court having jurisdiction to do so, it is prayed that a boundary commission be appointed by your Court to ascertain and designate the boundary line between the said State of Louisiana and the said State of Mississippi, [fol. a-12] and that said boundary commission be required to make the proper examination and delineate on maps prepared for that purpose, the true line as determined by this Court.

And that your Honors grant the State of Louisiana such other general relief to which it may be entitled.

The State of Louisiana, by Percy Saint, Attorney General. John Dale, of Counsel for the State of Louisiana. Richard F. Reed, Gerard H. Brandon, *Gerard H. Brandon,* Philip Hough, B. F. Young, John Dale, Jr., L. D. Dale, Solicitors for the State of Louisiana.

[fol. b] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING LEAVE TO FILE BILL OF COMPLAINT AND PROCESS ORDERED RETURNABLE MAY 11, 1925

On consideration of the motion for leave to file a bill of complaint herein,

It is now here ordered that the said motion be, and the same is hereby, granted; and process is hereby ordered to issue returnable on Monday, October 5 next.

[fol. c] IN SUPREME COURT OF THE UNITED STATES

SUBPŒNA AND MARSHAL'S RETURN OF SERVICE—Filed June 13, 1925

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the State of Mississippi, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in Equity, you are

hereby commanded that, laying all other matters aside, and notwithstanding any excuse, you be and appear before the said Supreme Court of the United States, holding jurisdiction in Equity, on Monday, October 5th, 1925, at the City of Washington in the District of Columbia, being the Seat of the National Government of the United States, to answer unto a bill of complaint of The State of Louisiana in the said Court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable William H. Taft, Chief Justice of the United States, at the City of Washington, the 19th day of May, A. D. 1925.

(Signed) Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal.)

Service of the above Subpœna and a certified copy of the Bill of Complaint therein mentioned are this Eighth day of June, 1925, accepted and acknowledged.

(Signed) H. L. Whitfield, Governor of the State of Mississippi. Rush H. Knox, Attorney-General of the State of Mississippi.

[fol. d] Office of the Marshal, Supreme Court of the United States, Washington, D. C.

Came to my hand the 22nd day of May 1925, and executed through acceptance of service in writing by H. L. Whitfield, Governor of the State of Mississippi, and Rush H. Knox, Attorney General of the State of Mississippi, on the Eight- day of June, 1925.

Witness my hand this 13th day of June, 1925, at the City of Washington.

(Signed) Frank K. Green, Marshal Supreme Court U. S.

[fols. e & e-1] In The Supreme Court of the United States

Answer in Chancery—Filed October 5, 1925

To the Honorable William H. Taft, Chief Justice, and to the Associate Justices of the Supreme Court of the United States of America:

The State of Mississippi, one of the United States of America, appearing herein through Henry L. Whitfield,

Governor of said State, and Rush H. Knox, Attorney General thereof, and assistant counsel, reserving unto itself the benefit of all exceptions by reason of the insufficiencies therein contained, answering the original bill of complaint exhibited against it in this Honorable Court, by the State of Louisiana, also one of the United States of America, says:

[fol. e-2] I

The allegations of Division I of the original Bill are admitted.

II

The allegations of Subdivision 1 and Subdivision 2 of Division II of the original bill are admitted. As to Subdivision 3 of the second Division of the original bill, this respondent says that the Constitution of the State of Mississippi provides that the Western boundary of that part of the State of Mississippi, between the 33rd and 31st degrees of North latitude, shall be the middle of the Mississippi River, or thread of the stream, and includes within the boundaries of the State of Mississippi all islands lying East of the thread of the Stream of said River, and also all lands which were at any time theretofore a part of the State. And the lands in controversy herein have been so claimed by the State of Mississippi since 1817, and so platted and surveyed in 1823, when the State of Mississippi was admitted into the Union as one of the United States of America.

III

The allegations of Division III of the original bill are admitted.

IV

It is denied that the lands on the Mississippi River in the State of Mississippi, opposite the lands in the State of Louisiana on Willow Point and adjacent thereto, gradually wore away by erosion caved into the Mississippi River and [fol. e-3] disappeared. It is denied that at the same time the shore of the Mississippi River on the Louisiana side at this point was gradually extended in an easterly direction,

and it is denied that such alleged extension of the shore was by accretions formed successively and imperceptibly to the soil of said shore, nor did such alleged accretions extend easterly to the distance of approximately five miles from the original Louisiana shore.

It is denied that the Louisiana shore of the Mississippi River was thus extended in an Eastern direction by alluvion formed by accretion, and so likewise is it denied that the thread of the channel of the Mississippi River was extended in an Easterly direction.

And so also is it denied that the boundary line between the State of Mississippi and the State of Louisiana was extended Easterly in like manner and in a like distance.

It is denied that the Mississippi River about 1912 and 1913, or at any other time, suddenly abandoned its old channel and formed a new channel by cutting same through the accretions attached to the Louisiana shore, as described in the original bill. It is denied that said alleged change of channel was made rapidly and violently by an avulsion which cut off some five or six thousand acres of land and left most of it eastward of the alleged new channel claimed to have been thus made by the Mississippi River.

It is denied that at the time of said alleged avulsion the boundary line between the said States of Louisiana and Mississippi was in and remained in the center of the alleged old channel.

[fol. e-4] It is denied that the alleged old channel of the Mississippi River claimed by the complainant to be East of the channel alleged to have formed by avulsion gradually filled with silt until the water ceased to flow through said old channel.

It is denied that the present boundary line between the State of Louisiana and the State of Mississippi did at the time alleged, or at any other time, become fixed in the middle of the alleged old navagable channel claimed by the Complainant to lie East of the present middle of the channel of the Mississippi River. And it is denied that the present boundary line of said States is as described in the last paragraph of Division IV of the original Bill.

V

1st. As to the map and survey marked "Exhibit A" to the original Bill, the defendant says that this map in no

way undertakes to delineate the Mississippi River, but is confined wholly to lands lying entirely West of said River.

2nd. As to the map and survey marked "Exhibit B" to the original Bill, the defendant says that this map in no way understakes to delineate the Mississippi River, but is confined wholly to lands lying entirely West of said River.

3rd. As to the map marked "Exhibit C" to the original bill of complaint, it will be observed that this map shows on the Mississippi side of the thread of the stream of the Mississippi River Island No. 98, called on other maps Tullos Island.

[fol. e-5] 4th. The map marked "Exhibit D" to the original Bill of complaint does not correctly show change by erosion and accretion; nor does it correctly show changes in the Mississippi River involving the territory in dispute.

5th. As to the map marked "Exhibit E" to the original Bill of complaint, the defendant says that the island shown thereon marked "Newman T. H." is Island No. 98 or Tullos Island, which was located within the limits of the State of Mississippi at and prior to 1817.

6th. It is denied that the red line marked by surveyor upon "Exhibit F" to the original Bill, shows the boundary line between the States of Louisiana and Mississippi. And it is denied that said map itself shows that such is the boundary line or thalweg of the alleged old channel of the Mississippi River. And it is denied that the red dotted line superposed the said map correctly delineates the approximate shore line of the Mississippi River in 1913 and 1915, as alleged in Subdivision 6 of Divison 5 of the original Bill.

7th. The map marked "Exhibit G" to the original Bill of complaint is made up from a map of Township 19, Range 13, 14 East of Louisiana, and Township 9, Range 8 West in Mississippi. But it is denied that the two maps are connected in the proper relative position one to the other, but it will be observed that this map of the Complainant shows that Tullos Island or Island No. 98 was a part of the State of Mississippi in 1823.

8th. It is denied that the map marked "Exhibit H" to the original Bill of Complaint shows correctly the river banks in 1882.

[fol. e-6] 9th. It is denied that the map marked "Exhibit I" to the original Bill of Complaint shows correctly the River banks in 1894.

10th. It is denied that the map marked "Exhibit J" to the original Bill of Complaint shows correctly the river banks in 1913 in the territory in dispute, and it is denied that an avulson occurred in 1912 and 1913 as shown on said map and marked cutoff.

VI

It is admitted that the State of Mississippi claims that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps marked "Exhibit A" and "Exhibit B" to the original Bill, and it is true that all of the lands east of said line shown on said maps are claimed as Mississippi territory. But it is denied that such claim is without foundation in fact or law. The facts are that the territory in dispute has been territory of the State of Mississippi from its organization as a State in 1817 to the present time, the said land being surveyed by surveyors of the United States of America in the year 1823, platted as a part of the State of Mississippi and sold by the United States of America as lying within the State of Mississippi. At all times since 1817 said lands have been claimed by the State of Mississippi; have been assessed with taxes by the State of Mississippi; and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto. And the said land has never been assessed for taxes in the State of Louisiana, nor until a short time before the bringing of this suit did the State of Louisiana make [fol. e-7] any claim to said land at any time as this defendant is informed and believes.

It is admitted that the State of Mississippi has sold land East of the boundary line as it existed in 1823 and West of the line claimed by the Complainant to be the channel of the Mississippi River as it existed at the time of the alleged avulsion of 1912 and 1913 and patents have issued for said land as alleged in the original Bill.

It is admitted that the Tax Collector of Issaquena County, Mississippi, sold to the State of Mississippi for delinquent

taxes the lands described in Exhibit L to the original Bill of Complaint.

It is denied that all or any of said land is Louisiana territory and it is denied that the action of the State of Mississippi and its officials in selling said land and issuing patents therefor, is illegal, null and void, nor is such action an attempt to appropriate territory belonging to the State of Louisiana.

VII

It is denied that the sovereignty of the State of Louisiana has been infringed by the State of Mississippi, but since the State of Louisiana, by this suit, has claimed the said land, it is true that it is now necessary that the boundary between said states at this point be determined. But it is denied that such boundary line should be fixed and determined as prayed for in the original Bill of Complaint and as indicated on Exhibit E thereto.

On the contrary the said boundary line should be located [fol. e-8] and fixed in accordance with the boundary line as it existed in 1823 as shown by Complainant's Exhibit A to his original Bill, as the center of the thread of the Mississippi River, as it existed then and 1817, is the true boundary line between the State of Mississippi and the State of Louisiana at the points in dispute herein.

Wherefore, this defendant prays that if a boundary commission be appointed by this Court to ascertain and designate the boundary line between the State of Louisiana and the State of Mississippi, upon the coming in of the report of said commission there be a decree of this Honorable Court fixing and determining the boundary line between said States, as the center or thread of the Mississippi River as it existed in 1823 as shown by the survey of the United States government published in 1823 which is filed as "Exhibit G."

Now having fully answered the original Bill of Complaint, the State of Mississippi submits this controversy to this Honorable Court for determination and decree.

The State of Mississippi, by Rush H. Knox, Attorney General. H. H. Creekmore, Pat Henry, E. C. Sharp, of Mississippi, Solicitors for the State.

[fols. f & g] IN THE SUPREME COURT OF THE UNITED STATES

MOTION FOR LEAVE TO FILE COMPLAINANT'S MOTION FOR COMMISSION TO TAKE TESTIMONY—Filed December 22, 1925

Now comes the complainant, by counsel, and moves the Court for leave to file the attached motion for commission to take testimony.

Percy Saint, Attorney General of Louisiana; John Dale, Robert Ash, of Counsel for the State of Louisiana.

[fol. h] IN THE SUPREME COURT OF THE UNITED STATES

MOTION FOR COMMISSION TO TAKE TESTIMONY—Filed December 22, 1925

Now comes the complainant, by counsel, and moves the Court to issue a commission for the taking of proofs in the above-entitled cause.

The complainant further moves the Court to make the following conditions a part of the said commission:

1. Proofs shall be taken by a commissioner or commissioners to be named and designated in writing by agreement of both parties.

2. Each commissioner named and designated as provided herein before assuming his duties shall take and subscribe [fol. h-1] an oath that he will faithfully and impartially discharge and perform all duties devolving on him as such commissioner according to the best of his ability and understanding. Such oath shall be filed with the clerk of this Court together with the writing naming and designating such commissioner.

3. Such commissioner or commissioners shall, with all convenient speed, proceed to take all proofs which may be offered by either party at such times and places as may be agreed upon by said parties, or as may be designated by either of said parties upon ten days' notice in writing to the opposing party.

4. Such commissioner or commissioners shall have authority to administer oaths, to subpœna witnesses, to certify

proofs and to perform all acts necessary to carry the order of the Court into full effect.

5. Each commissioner before whom proofs are taken shall employ a competent stenographer, at the expense of the State which is offering the proofs, who shall make a complete record of all proofs taken or offered and of all proceedings in connection therewith. The stenographer shall furnish the commissioner with three typewritten copies, one copy of which shall be delivered to counsel for each of the States of Louisiana and Mississippi. The other copy, after verification and correction by him, shall be filed by the commissioner with the clerk of this Court as evidence in the case.

6. Any matter appearing in the published statutes of Louisiana, Mississippi, or of the United States, or in any congressional documents, or in any other published record of Louisiana, Mississippi, or the United States pertaining to [fol. h-2] the issues herein shall be received as evidence without further or other authentication than the publication thereof, subject, however, to objections on grounds other than authentication.

7. The compensation of each commissioner shall be — dollars per day for each day devoted to the case and all necessary expenses.

8. Each State shall pay the expense of taking proofs in its behalf and of all witnesses summoned in behalf of each State respectively. Provided, that upon final judgment of this Court the costs shall be taxed as the Court may direct. Witnesses shall be entitled to compensation at the same rate as witnesses in the United States District Courts.

Percy Saint, Attorney General of Louisiana. John Dale, Robert Ash, of Counsel for the State of Louisiana. Richard F. Reed, Gerard Brandon, Gerard H. Brandon, Philip Hough, B. F. Young, John Dale, Jr., L. D. Dale, Solicitors for the State of Louisiana.

[fol. i] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATIONS AS TO APPOINTMENT OF COMMISSIONER—Filed December 22, 1925

The plaintiff, State of Louisiana, and the defendant, State of Mississippi, hereby agree that the Supreme Court of the United States may appoint Hon. Jack Thompson, clerk of the United States District Court for the Southern District of Mississippi, Jackson, Mississippi, commissioner to take testimony in the above numbered and styled suit, and that the Court give him all the powers necessary and proper for the efficient execution of said appointment.

[fol. i-1] Signed in duplicate October, 1925.

(Signed) Percy Saint, Attorney General of Louisiana. John Dale, Gerard Brandon, Rich'd F. Reed, G. H. Brandon, Rush H. Knox, Attorney General of Mississippi. E. C. Sharp, H. H. Creekmore, Pat Henry.

[fol. j] SUPREME COURT OF THE UNITED STATES

ORDER APPOINTING JACK THOMPSON COMMISSIONER—Filed January 11, 1925

On consideration of the motion of Robert Ash, Esquire, of counsel for the complainant, and of the stipulation of counsel for the respective parties designating Jack Thompson, Esquire, Clerk of the United States District Court for the Southern District of Mississippi, Jackson, Mississippi, as the Commissioner to take testimony and proofs and to certify the same to this Court.

It is now here ordered by this Court that the said motion and stipulation be, and the same are hereby, approved; and that the said Jack Thompson, Esquire, be, and he is hereby, appointed a Commissioner of this Court to take testimony and proofs offered by the parties in accordance with the terms of the motion and stipulation filed herein on December 22, 1925.

It is further ordered that the said Commissioner, before assuming his duties, shall take and subscribe an oath that

he will faithfully and impartially discharge and perform all the duties devolving upon him as such Commissioner according to the best of his abilities and understanding. Such oath to be filed with the Clerk of this Court.

It is further ordered that the said Commissioner shall receive compensation at the rate of Ten dollars ($10.00) per diem while engaged in executing this commission.

[fol. k] IN SUPREME COURT OF THE UNITED STATES

OATH OF JACK THOMPSON, COMMISSIONER—Filed February 3, 1926

STATE OF MISSISSIPPI,
County of Hinds, ss:

Oath

I, Jack Thompson, having been appointed Commissioner to take testimony and proofs and to certify the same to the Court in the above entitled cause, do solemnly swear that I will faithfully and impartially discharge and perform all the duties devolving upon me as such Commissioner according to the best of my abilities and understanding.

(Signed) Jack Thompson.

Subscribed and sworn to before me this 30 day Jan'y, 1926. (Signed) R. B. Ricketts, U. S. Comm'r, So. Dist. of Miss. (Seal.)

[fol. l] SUPREME COURT OF THE UNITED STATES

MOTION FOR LEAVE TO OPEN, FILE, AND PUBLISH TESTIMONY—Filed November 18, 1927

Comes now the complainant in the above-entitled cause, by its special counsel, and suggests to the Court that Honorable Jack Thompson, special commissioner, has completed the taking of testimony in the case and has lodged the entire record with the clerk.

The complainant therefore moves the court for leave to open, file and publish the testimony which has been certified by the commissioner and has been sent by the said commissioner to the Clerk of this Court.

Robert Ash, Munsey Building, Washington, D. C.,
Special Counsel for Complainant.

[fol. m] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING LEAVE TO OPEN, FILE, AND PUBLISH TESTIMONY—Filed November 28, 1927

On Motion to Open, File, and Publish Testimony

On consideration of the motion of Mr. Robert Ash, of counsel for the complainant, to open, file, and publish testimony in this cause, It is now here ordered that the said motion be, and the same is, hereby granted.

[fols. n & 1] IN THE SUPREME COURT OF THE UNITED STATES

No. 22, Original

STATE OF LOUISIANA, Complainant,

vs.

STATE OF MISSISSIPPI, Defendant

Appearances:

For the complainant: Hon. Percy Saint, Attorney General State of Louisiana, Hon. John Dale, Hon Gerard Brandon, Hon. Gerard H. Brandon, Hon. Philip Hough, Hon. John Dale, Jr., and Hon. L. D. Dale.

For the defendant: Hon. Rush H. Knox, Attorney General State of Mississippi; Hon. E. C. Sharp, Hon. George Butler, Hon. H. H. Creekmore, Hon. Pat Henry, and Hon. P. C. Canizaro.

Transcript of Evidence

Caption

Be it remembered that the following testimony, oral, record and documentary, was taken at the Federal Court room in the City of Jackson, Mississippi, on this, the 4th day of October, 1926, before Hon. Jack Thompson, Commis- [fol. 2] sioner, appointed by the Supreme Court of the United States in the above entitled cause, the parties having agreed to the taking of such testimony at said time and place.

Offers in Evidence

By Mr. John Dale: The complainant offers the following maps:

1. A duly authenticated copy of Exhibit A attached to the original bill of complaint.

2. A certified copy of Exhibit B attached to the original bill of complaint.

2½. A certified copy or duly authenticated map marked Exhibit BB.

By Mr. Henry: The defendant objects to the Exhibit BB offered in evidence by the complainant for the reasons that the map does not show to whom the property, if any there be, or if any there was, belongs, and that it is a mere sketch of something which is called Hopkins Island, which is not connected with either Mississippi or Louisiana.

The defendant further objects for the reason that this is a map issued by the Surveyor General of the State of Louisiana, and that the State of Mississippi is not bound by it. The defendant further says that the certificate is from the Department of the Interior, General Land office, [fol. 3] Washington, D. C., which merely shows that the map is on file there.

By the Commissioner: Let the objection of counsel for defendant be noted in the record, to be considered at a later date, along with all other objections.

By Mr. Dale: Resuming where we left off, the complainant offers:

3. A certified copy of Exhibit C to the original bill of complaint, being Sheet 17 of the Mississippi River Commission Survey.

4. A certified copy of the map marked Exhibit D to the original bill of complaint, and being Sheet 17 of the Mississippi River Commission Survey.

5. A certified copy of map attached to the original bill of complaint, marked Exhibit E, shown on Sheet No. 17 of the Mississippi River Commission Survey.

6. A map shown on the original bill of complaint marked Exhibit F, and shown on Chart 47 of the Survey of the Mississippi River Commission.

7. A certified copy of Chart No. 45, made by the Mississippi River Commission 1879, 1880 and 1882, marked Complainant's Exhibit EE.

8. A certified copy of Chart No. 46 made by the Mississippi River Commission 1879-1880 and 1882, marked Exhibit EEE.

[fol. 4] Capt. GEORGE PRINCE, being first duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination.

By Mr. Gerard Brandon:

Q. This is Capt. George Prince, is it?
A. Yes, sir.
Q. Have you been sworn, Captain?
A. Yes, sir.
Q. I will ask you to please state your age and your occupation?
A. I am fifty-six years old and am a steamboat captain and pilot.
Q. In what business are you now engaged?
A. In the steamboat business.
Q. How long have you been engaged in that business?
A. For more than thirty years.

Q. In what waters, Capt. Prince?

A. On the Ohio and Mississippi rivers.

Q. On the Ohio and Mississippi. On what portion of the Mississippi River?

A. From Memphis to New Orleans.

Q. In what capacity have you been engaged in that business?

A. As captain and pilot.

Q. Are you a licensed pilot?

[fol. 5] A. Yes, sir.

Q. For what length of time have you held a license as pilot on the Mississippi River, Captain?

A. For thirty years.

Q. Do you still hold a license as pilot?

A. Yes, sir.

Q. You said, as I understood you, that you were also licensed as captain and master?

A. Yes, sir.

Q. Are you still running a boat, or not, on the Mississippi river?

A. Yes, sir.

Q. Then you still hold a master's license?

A. Yes, sir.

Q. And you say you are still running a boat on the Mississippi river in that capacity?

A. Yes, sir.

Q. Captain, I will show you a map which has been offered in evidence as Exhibit C to the complaint in this case, and I direct your attention to a point on the said map on the Louisiana shore marked "Willow Point." I will ask you whether or not you are acquainted with that section of the Mississippi river?

A. I am.

Q. When did you first become acquainted with that sec-

[fol. 6] tion of the river?

A. About 1897.

Q. In about the year 1897?

A. Yes, sir.

Q. Under what circumstances, Captain?

A. I operated a tow boat up and down that way, up and down the river.

Q. How high up?

A. Did we operate the boat?

Q. Yes, sir; about those points?
A. To New Orleans below and——
Q. (Interposing.) How far above?
A. About 100 miles above.
Q. And you say to New Orleans below?
A. Yes, sir.
Q. You say that it was in 1897 that you became acquainted with the conditions there?
A. Yes, sir.
Q. During 1897 how many times did you have occasion to pass that point?
A. I would say anywhere from six to ten times a year.
Q. During the year?
A. Yes, sir.
Q. At that time in what capacity were you on the boat that passed up and down the river?
[fol. 7] A. As captain and pilot.
Q. Since the year 1897 have you had occasion or not to pass up and down that section of the river?
A. Yes, sir.
Q. How often a year?
A. Well, from six to ten times.
Q. Every year or only parts of years?
A. I think that is a good average for the entire time except from 1914 until 1920, I used to run up there regular.
Q. Regularly from 1914 to 1920?
A. Yes, sir.
Q. Every year?
A. Yes, sir.
Q. I understood you to say that you first became acquainted with and familiar with the Mississippi River in the section of Willow Point in 1897, and that on an average you had gone up and down the river in front of that point from six to ten times a year, and that between 1914 and 1920 you made trips regularly?
A. Yes, sir.
Q. During this time did you become acquainted, or not, with conditions along the main shore?
A. Yes, sir.
Q. When you first became acquainted with this section of the river in 1897, what was the condition of the short line [fol. 8] on the Louisiana side of the river at what is known and indicated on the Exhibit as Willow Point?

A. That was a sand bar.

Q. You say that was a sand bar there?

A. Yes, sir.

Q. Was it of a great or small extent at the time that you first noticed it?

A. Well, it was a dry sand bar for a good ways out in the river, and then back two or three hundred yards you could see a growth of willows or cottonwood.

By Mr. Henry: That is very indefinite. Can't you give it to us more accurate than that.

By Mr. Brandon: I will try and fix it. Let me ask this question:

Q. With which shore was that connected, or was it connected with either shore at the time?

A. It was connected with the Louisiana shore.

Q. About wh-t distance did this bar extend out from the Louisiana shore with which it was connected in 1897?

A. It was about three or four miles long when the river got down low.

Q. When the river got down low?

A. Yes, sir.

Q. In the ordinary stage of the water, or high water, [fol. 9] what would be its condition then, when the water was ordinary and when the water was high?

A. What do you mean by ordinary water and what do you mean by high?

Q. I am not sufficiently posted on river matters to say. You are a steamboatman and I will have to ask you. In low water you say it extended out about three or four miles. In high water what would be the condition?

By Mr. Henry: He said that it extended down. He didn't say it extended out.

By Mr. Brandon:

Q. Well, I will ask him whether I was right, whether it was on east towards Mississippi?

A. Yes, sir; it extended towards the Mississippi shore.

Q. Three or four miles?

A. Yes, sir.

Q. In very low water?

A. Yes, sir.

Q. In high water what was the condition of that bar?

A. The bar was still there but covered by water.

Q. As to extent state whether or not that bar remained stationary or not?

A. The bar kept building each year.

Q. It was building each year?

A. Yes, sir.

[fol. 10] Q. In which direction was it building with reference to the shore line? Towards the Mississippi shore or towards the Louisiana shore?

A. It was building towards the Mississippi shore line.

Q. Out from the Louisiana shore?

A. Yes, sir.

Q. Did it remain still connected with the Louisiana shore?

A. Yes, sir.

Q. At this time back as far as 1897, you have stated that you passed up and down the rover as master and pilot of a steamboat on which you were a number of times a year. At that time on which side of the river was the main channel or current?

A. It was along the Mississippi shore.

Q. And going up and down the river in your steamboat did you have occasion to land on either side—on both shores, Captain Prince?

A. Yes, sir.

Q. On both shores?

A. Yes, sir. On both sides.

Q. In 1897 state if you know whether there were in existence any islands between the main shore and the sand bar that you have testified was making out from Willow [fol. 11] Point on the Louisiana shore?

A. No, sir; there was no island.

Q. There was no island?

A. No, sir.

Q. If there had been an island in that river would you or not have known it?

A. Yes, sir.

Q. You would have known that?

A. Yes, sir.

Q. And you state that there was no island?

A. No, sir; there has never been an island since I have been there.

Q. And that acquaintance extends back to 1897?

A. Yes, sir.

Q. It was a clear river between Willow Point and the Mississippi shore so far as islands were concerned?

A. Yes, sir.

Q. Do you know where Albemarle Bend is?

A. Yes, sir.

Q. Where is Albemarle Bend?

A. It begins about thirty-six miles above Vicksburg and extends about ten miles around the bend. They always called it ten miles.

Q. Was it or not in that part of the river between the [fol. 12] Mississippi shore and Willow Point?

A. Yes, sir.

Q. Is that Albemarle Bend?

A. Yes, sir.

Q. And I understand you that was a clear river so — as islands were concerned at that time?

A. Yes, sir.

Q. You have stated that from 1897 the sand bar remained out from the Louisiana shore continuously and continued to grow. In what direction did it grow?

A. It followed the course of the river, building across the main shore.

Q. On which shore did it remain connected?

A. The Louisiana shore.

Q. As that bar extended out, you stated at first, when you first knew it, the end of it or the point of it was a naked sand bar. Did any change take place, or not, with reference to the character of that bar as it grew?

A. Yes, sir; willows came on it, cottonwood and timber.

Q. On what part of the bar did they begin to come on principally?

A. Back from the water I would say, about 300 yards.

Q. With reference to the point where was this? Towards the end of the bar?

A. Yes, sir.

[fol. 13] Q. As these willows grew what changes took place with reference to the bar where the cottonwood and willows sprung up with reference to alluvium deposit?

A. Trees grew there, and where trees grew the land built up higher, higher than the main land.

Q. What was it called, this change that took place?

A. What was what?

Q. What was the point called where it got higher there at the end. What was the end of this point called?

A. They called it Newman's tow-head.

Q. What is a tow head, Captain?

A. It is a kind of a middle ground in the river. A small island that trees and bushes grown on.

Q. When you first knew Newman's towhead what was the character of timber that sprang up on that Newman's tow-head, Captain?

A. Willow and cottonwood.

Q. Willow and cottonwood?

A. Yes, sir.

Q. Where was the river at this time with reference to the end of that towhead?

A. It was towards the Mississippi side.

Q. Between the towhead and the Mississippi shore?

A. It was for awhile until 1912.

Q. In 1912? What took place in 1912?

[fol. 14] A. In 1912 the river broke through right there at that towhead and sand bar.

Q. What was the result of this breaking through there, Capt. Prince?

A. Well, the channel of the river went through.

Q. Do you know of this breaking through of your own personal knowledge? Did you see the changed conditions?

A. Yes, sir.

Q. Tell the Court how you happened to know about it?

A. Well, I was going up the river and I saw the break in the timber through the willows.

Q. When was that?

A. That was in 1912.

Q. What part of the year? What part of 1912?

A. It was during high water. I don't remember the month, but it was in the spring of the year.

Q. And you saw the break in the timber?

A. Yes, sir.

Q. On that trip up the river in the spring of 1912 when you noticed the river breaking through, did you go through the break on that occasion or not?

A. No, sir.

Q. Where did you go?

A. We went around the main channel of the river.

Q. Between the end of the tow head, the Newman Tow-head and the Mississippi shore?

[fol. 15] A. Down Albemarle Bend.

Q. In 1912 when the river broke through there was there any island or land between the end of the Newman Tow head and the main Mississippi shore?

A. No, sir.

Q. It was an unobstructed river as far as any island was concerned?

A. The unobstructed river; yes, sir.

Q. And up the river back through there in highwater, the high water of 1912, did any changes take place in the channel of the river, or the course of the river?

A. Yes, sir; the river bank fell off from Tennessee Point on the Mississippi side.

Q. Down?

A. Down towards there and across the old channel of the river.

Q. Did the channel remain open, or if so, for how long? What took place with reference to the channel of the river?—the channel?

A. The old channel remained open until about 1916. We could go through there.

Q. In all stages of the water?

A. Yes, sir. No—in 1916 we could not go through the old channel.

Q. In 1916 you could not go through?

A. No, sir; not in low water.

[fol. 16] Q. Now then, at which end did it begin to fill up?

A. That was on the upper end.

Q. At the upper end?

A. Yes, sir.

Q. And by 1916 it was so filled up they could not go through there at any stage of water with a boat?

A. Yes, sir; you could go through there until there was about twelve feet on the guage. Then you had to quit if the bar was out.

Q. You have stated that when you first knew the sand bar that made out from Willow Point to Newman's Tow Head that it had a small growth of cottonwood and willow timber on it, and that this caught the alluvium, making the tow head. When you first noticed it what was the size of the timber at the end of this point?

A. Only small trees there right under the point. I have tied up there several times to trees from eight to ten inches in diameter.

Q. That was the size of the largest trees?

A. Yes, sir.

Q. In what year was that? About what year?

A. It was about 1900.

Q. In about 1900 large trees were on Newman's Tow Head, about ten inches in diameter?

A. From eight to ten inches.

[fol. 17] Q. What was the character of those trees as to variety, Captain?

A. Mostly cottonwood.

Q. Any willow?

A. And some willow; yes, sir.

Q. Mostly cottonwood and some willow?

A. Yes, sir.

Q. State whether or not Albemarle Bend at the end of Newman's Tow Head, has, since that cut off, filled up entirely, the upper end of it?

A. Yes, sir; the upper end filled up entirely.

Q. Can you go through there at any stage of the water with a boat now?

A. No, sir.

Q. How long has it been since you could go through there?

A. In 1920 was the last time, and it was very hard to get through then.

Q. As late as 1920 you were able to go with a steamboat between the end of Newman's Tow Head and the main shore, were you?

A. Yes, sir.

Q. You made that trip yourself?

A. Yes, sir.

Q. Now, you have stated that you went up Albemarle Bend in very high water as late as 1920. On which side of [fol. 18] the shore, the Louisiana or the Mississippi side, was the current at that time?

A. The current of the river was down behind Newman's Tow Head, between Newman's Tow Head and Willow Point.

Q. That was the main current?

A. Yes, sir.

Q. Now, I mean with reference to Albemarle Bend, when you went up there, when the water was flowing through Albemarle Bend, which way did the current make through there?

A. It went down right next to the Newman Tow Head.

Q. Between Newman's Tow Head and the Mississippi shore?

A. Yes, sir; the Mississippi shore.

Q. Now, Capt. Prince, you have already testified substantially to this effect, that the bar grew gradually and steadily out from the Louisiana shore, or Willow Point, towards the Mississippi shore, up until 1912, out from the Louisiana shore. What change, if any, was taking place at that time on the Mississippi shore?

A. The Mississippi banks were caving.

Q. Much or little?

A. Caving very rapidly.

Q. Do you know whether there was any revetment being done by the Levee Board on the Mississippi shore of Albemarle Bend?

A. Yes, sir; the Government revetted, I think, in 1910.

[fol. 19] Q. At the upper or lower end of Albemarle Bend?

A. They were working down about the middle of it.

Q. How long did that work continue?

A. I think it was for some two years if I remember right. I think they were there two years.

Q. Do you know, during the period of your knowledge there, how far back the Mississippi shore caved, or can you estimate it?

A. No; only from the sand bar on the other side.

Q. Was it a short distance or a long distanve?

A. Quite a long distance.

Q. Now, you say then as the Mississippi shore caved back the Louisiana shore made out?

A. Yes, sir.

Q. And you have stated also that it made out each year from the Louisiana shore to the Mississippi shore?

A. Yes, sir.

Q. Now, I would ask you the best of your knowledge how far from the Louisiana main land had this sand bar been extended out towards the Mississippi shore in 1912, before the cut off you have spoken of—how many miles about?

A. I can't tell how far back it went, but along the river it was about five or six miles from Willow Point to the end of the point of the bar.

Q. Now, in 1912, you say the river made a cut off between the tow head and the Louisiana shore?

[fol. 20] A. Yes, sir.

Q. Now then, after that cut off occurred, where did the main channel of the rover run as related to Newman's Tow Head and the Louisiana shore,—after the cut off?

A. Well, they went out down through the middle of the bar.

Q. Between the Louisiana shore and the Newman Tow Head?

A. Yes, sir.

Q. Then do I understand you it made at first, after the cut off, an island at Newman's Tow Head?

A. Yes, sir.

By Mr. Henry: I don't think he said that. Let's get it right.

By Mr. Brandon:

Q. All right. State whether or not Newman's Tow Head became an island after the cut off?

A. Yes, sir.

Q. Since the cut off state whether or not, if you know, whether Newman's Island has continued to grow?

A. Yes, sir.

Q. In which direction has the growth of Newman's Tow Head been?

A. The old bed of the river filled up until almost entirely closed down to the upper end, entirely closed, and the lower [fol. 21] end just a small piece. A small gap.

Q. That is all I care to ask Capt. Prince.

By Mr. Dale:

Q. Do you know why a tow head gets higher on the side furthest out towards the river?

A. Yes, sir.

Q. Why?

A. Well, the sand bar will pick up the sand from the direction that the wind is blowing. It will pick up the sand as it blows against the timber, and that part of the land is built higher at the timber than any place else.

By the Commissioner:

Q. What is a tow head?

A. It is a high place on a sand bar where the willows and the trees begin to grow. It is generally connected with the land or the main shore.

By Mr. Dale:

Q. As I understand from your testimony, the sand is caught by the trees in the same manner that the snow would drift up?

A. Yes, sir.

Q. Piles up high against them?

A. Yes, sir.

Q. And that, in your opinion, makes the tow head fill up next to the trees?

A. Yes, sir; that's what makes that point grow higher [fol. 22] than any other point on the bar.

Q. Do you know what size the timber is now on the Newman Tow Head?

A. No, sir; but there are some big trees there.

Q. You have never had occasion to observe it carefully?

A. It is all timber, I jusge in the neighborhood of twenty-four to twenty-six inches.

Q. What class of timber is on it, Captain?

A. Cottonwood and willow.

Q. That is all we care to ask. You may cross-examine the witness.

Cross examination.

By Mr. Butler:

Q. Captain Prince, I show you a map that has been marked Exhibit G to the bill of complaint filed in this case, on which the section and section lines are shown, and the sections are numbered, showing the river bed in 1883, and showing Tullos Island, or Island No. 98, and I will ask you how far east of a point anywhere opposite Tullos Island or Island No. 98, this point had extended in 1897 when you first saw it?

A. I never remember seeing Island No. 98.

Q. You say you first became familiar with the point in 1897?

A. Yes, sir.

Q. How far east in point of extent, by reference to some [fol. 23] section number or some mark on the map in 1897?

A. There was not any island there.

Q. I did not ask you about that.

A. I don't know anything about your sections. I can't tell you anything about that. All I know is the river.

Q. You don't know how far it had extended east from the original line of 1823?

A. No, sir.

Q. I call your attention to Map Exhibit J to the bill of complaint showing the cut off of 1912 and 1913. Do I understand from your testimony that this point, Willow Point, prior to 1912 and 1913, the eastern end of which is shown here as Newman's Tow Head, had extended out approximately this distance prior to the cut off of 1912-13?

A. Willow Point extended out in this direction, northeasterly, a distance of five miles before the cut off.

Q. At what time had the river extended as far east as the section marked 28 on the map J?

A. I don't know anything about the section. I can't tell you.

A. Well, that is the first point. It shows every extent, 28, 27, 22, 15 and 9. That shows the shore line circles around through there. At what time did it reach those points?

A. This was made out here up till 1912.

[fol. 24] Q. In other words, you say it shows——

A. (Interposing.) Willow Point was on the foot of Salem Bend.

Q. Was Willow Point at the foot of Salem Bend in 1912? The Mississippi River reached out as far as shown on the Map Exhibit J, is that right?

A. As near as I can tell you.

Q. Now, look at that Chart Exhibit D to the bill of complaint. When did the channel there east of No. 98 close, if you know?

A. There was no island there,—not in my time.

Q. But I am asking you when it closed, if you know?

A. There has not been any island there since 1897.

Q. This map purports to be a survey of 1892, 1894, 1899 and 1900, and 1907, and I want to ask you when, if at all, this channel shown to the east and north of Island No. 98 closed, if you know?

A. There was no Island 98 there in my time.

Q. Did you ever know of any such land being designated as Island No. 98?

A. No, sir.

Q. You never had any knowledge of it at all?

A. No, sir.

Q. Have you ever seen and observed to ascertain whether or not there is any cottonwood timber now growing on the southern part of Island No. 98, shown on Exhibit D to the [fols. 25 & 26] bill of complaint of the size of thirty inches or more in diameter, the same being along in Sections 18 and 21 as shown on the map, Exhibit H?

A. Where is that section?

Q. Here is 28 and here is 21, and this is Exhibit H I am referring to. Here is the island I refer to. Now, this island is shown on Exhibit D as Island No. 98. I want to ask you if you have ever seen or observed since 1897, or recently, cottonwood timber growing on there in diameter of 30, 32 or 33 inches?

A. I don't know where the island is.

Q. I want to ask you if you have been along there on the line of Section 28, Section 22, shown on the Map Exhibit D, and will ask you if it is not a fact that that old channel or chute shown on Exhibit D is still clearly delineated with a very few trees growing on it right today, or do you know whether that is true or not?

A. I don't know where that is. I will have to find where it is. If I knew I would answer you.

Q. Now I show you Exhibit D, which shows Island No. 98, and also Chotard Landing.

A. There is no island there.

Q. Wait a minute. I am not through. See if you can locate it by section numbers and see what we are talking about here. Of course, I understand that you are not a land man. I show you also Exhibit G, showing that Tullos [fol. 27] Island, or Island No. 98 is composed of a part of Section 20, a part of fractional Section 21, a part of fractional section 28, a parge part of fractional section 29 and a little bit of fractional section 30. Now, I want to ask you if you have seen or observed at any time since 1897 and on up till now, cottonwood growing down here on sections 21 and 28 of about 28 or 30 inches or more in diameter?

By Mr. Dale: We object to the question asked for the reason that it is calculated to mislead the witness.

By Mr. Dale:

Q. That map, Exhibit D showing the surveys of 1882 and 1894, shows that Tullos Island existed in 1882, with timber on it, but prior to the time that this witness ever visited that part of the Mississippi river the map also shows the survey of the Mississippi River Commission in 1894, in which Tullos Island had entirely disappeared, and there was no such Island there after 1894, or after the witness became acquainted with that section of the river.

A. I know nothing about sections.

Q. Now, will you refer to some exhibit, preferably Exhibit D and show me how far Willow Point or Newman's Tow Head extended out into the river when you first became familiar with it in 1907?

A. It extended from Willow Point on out in the direction of——

[fol. 28] Q. (Interposing.) How far? Look, here is Willow Point here, Captain. We are looking at the eastern edge of Willow Point?

A. Yes, sir.

Q. How far from a perpendicular line east had this land extended when you first knew it, that is, from Willow Point?

A. Well, from Willow Point it came over to Albemarle Bend. It was about ten miles from Duvall's Landing and Belleview Point. After the river broke through it was about two and a half miles from Belleview Point to Willow Point. It is between nine and ten miles around the bend.

Q. My question is how far east of Willow Point or Pecan Grove Plantation had this land—call it that or what you please, extended east in 1897?

A. I don't know the points of the compass there. That all caved away. I can't tell you about how far.

Q. You don't know how far?

A. No, sir.

Q. Do you know how far it went at the first point farthest east the Mississippi River ever went from Willow Point?

A. No; I can't tell you the distance.

Q. It reached the maximum eastern point about 1917 didn't it?

[fol. 29] A. No, sir.

Q. Did you know a man up there by the name of Captain somebody, that committed suicide,—Maj. Higgins, in 1917 on account of——

A. (Interposing.) I didn't know him.

Q. Do you know where the Higgins plantation was?

A. No, sir.

Q. Or where his land was?

A. No, sir.

Q. Up till lately—last year—was there a large lake, the mouth of which is at the present landing known as Chotard Landing that extended along on up along with the river—where the river was in 1917, for a distance of a mile or so, that never filled up?

A. That right next to the river shore had not filled up.

A. A large lake?

A. Yes, sir; good size.

Q. And it extends on up for some distance north of Chotard Landing, up where they have those logs?

A. Yes, sir; for seven or eight miles.

Q. There are two or three lakes up at the north end of what was originally Tullos Island, are there not?

A. I don't know where Tullos Island is. It was not in the river at the time that I was there.

Q. When land accretes, makes there by accretion, it *it* [fol. 30] does not leave a lake intervening, does it?

A. Very often.

Q. How does it accrete in between them and leave a lake?

A. Well, sometimes the river makes a big cut off.

Q. You don't call that an accretion when it makes a cut off?

A. To be sure it does.

Q. Now, I want to ask you if you know anything about a place up there called St. Francis Chute?

A. In and around this neighborhood?

Q. Yes, sir; right east of Willow Point?

A. I never saw it.

Q. Did you ever hear of it?

A. I never heard of it at all by that name.

Q. Do you know whether or not there is timber growing down there in Section 30, or the southeast corner of the Island originally known as Tullos Island, which measures two feet from the ground, ten or fifteen feet in circumference?

A. I never saw Tullos Island and therefore I can't tell you anything about it.

Q. Do you know whether or not there is timber now growing and standing at the point shown on Exhibit B to the bill of complaint and indicated here as timber, marked Island No. 98, whether there is any island or not, whether [fol. 31] that timber is now growing and standing there that is from 28 to 30 inches in diameter,—cottonwood timber?

A. No, sir.

Q. Up north of Chotard Landing to the right of the Mississippi shore side?

A. All along the Mississippi shore from Chotard,—north of Chotard, and all the way around the bend there is timber growing.

Q. On the Mississippi side?

A. Yes, sir.

Q. And that is good, large cottonwood timber, and lots of it, is it?

A. There may be some cottonwood, but most of it is other timber.

Q. I want to ask you if you know where the old gentleman had a little camp up there on Island No. 98 for the last four or five years?

A. I don't know anything about Island No. 98.

Q. Well, at a point east of Willow Point, over across the river from Willow Point, where there was an old gentleman had his cabin and living there?

A. Well, there was some niggers lived all along there.

Q. Do you see and observe that along that point, along in Section 20 or 21, from the old river bed along in here, that there are some very large cottonwood trees now grow-
[fol. 32] ing on an elevation eight or ten or fifteen feet higher than the surrounding ground, on which the soil has been washed away from the roots like it does on the banks of Eagle Lake and other places? Other places that you have observed on the Mississippi river?

A. There is timber all around that bend.

Q. But have you noticed it growing up there on that elevation with the dirt all washed away from the roots? Have you noticed that?

A. No, sir.

Q. You have not noticed that?

A. No, sir.

Q. Coming back here to Section 30, you don't deny that there is an elevated bank at that point, do you?

A. At Chotard?

Q. Just above Chotard, a half a mile or a mile?

A. The bank along Chotard is filled there a little above. That is higher there than it is up in the middle of the bend.

Q. Coming back to Section 30, Captain Prince, which you say you do not identify at all as a section, but which is shown on Exhibit F, is there any timber growing—referring to Exhibit F—if there is not timber growing right across here on the southeast of what is known as Newman's Tow Head,—cottonwood timber, that will measure from three feet to three feet six inches in diameter?

[fol. 33] A. You say that is on the foot of Newman's Tow Head?

Q. Yes, sir; do you remember that?

A. I said that there is timber growing there.

Q. I know, but large timber, isn't it?

A. Well, away down on the foot here are *q*illows.

Q. I am not talking about away down on the foot.

A. I can't tell about the section.

Q. I point out a place on the map here marked with a cross mark,—marked with a circle on the map, right around in the vicinity west of Chotard plantation, the present vicinity of Chotard plantation, and will ask you if there are not some very large trees growing there right today?

A. There is some large timber there but I don't know the size of it.

Q. I will ask you if it is not a fact that Mr. Leonard cut merchantable timber off of that point down around the vicinity indicated by the mark there that I have called your attention to a number of years ago, mostly cottonwood?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Do you know whether or not there is a point where the water now backs up in the old channel of 1823 in times of high water, where the old channel originally came in here?

A. Yes, sir.

Q. Water does back up in there, does it?

[fol. 34] A. Yes, sir.

Q. At times of high water?

A. Yes, sir.

Q. You spoke about observing a break across a point which was on the Newman tow head in 1912 or 1913, and you said that the reason why you observed it was because you noticed the timber line was broken?

A. Yes, sir.

Q. Now, was there timber on the right hand side of the break and also on the left hand side of the break in 1912?

A. Yes, sir.

Q. Large or small timber?

A. Small timber.

Q. How big was it then?

A. It looked like it might have been eight or ten inches.

Q. Did the break occur east or west of the point of Newman's tow head as you noticed it in 1897?

A. It went down the west side.

Q. How far the west side?

A. Right from under Willow Point to Chotard.

Q. That does not answer my question.

A. I don't know how to answer it then.

Q. You have designated a point where the break occurred in 1912, and that is shown pretty well on Exhibit F is it?

A. Yes, sir; here it is right here.

[fol. 35] Q. The point I am asking you about is if the point of the break is shown east or west of where the river was—the main channel of the river in 1887?

A. According to the map it would be west of it.

Q. How much west?

A. I can't tell exactly.

Q. Now, Captain, you have said here is where the river broke through in 1912?

A. Yes, sir.

Q. Now, that is where the river broke through at that time?

A. Yes, sir.

Q. I want to ask you where the point of land was in 1897 in reference to this Newman tow head?

A. This is the Newman tow head over here.

Q. Do you mean that the Newman Tow head had reached out here in 1897, five miles from Willow Point?

A. No; in 1912.

Q. I am asking you about 1897 when you first knew it?

A. No; it built out there—continued every year.

Q. Now, going back to the question on the point of Newman's tow head where it broke through in 1912. Where was the point on Newman's tow head with reference to where it broke through in 1912 when you first became familiar with the river, in 1897?

A. Well, it was all a sand bar from Willow Point all [fol. 36] the way around to Henderson's.

Q. How far is that from the break through?

A. Well, I can't get your question.

Q. Does this map correctly show the break of 1912?

A. It does.

Q. Where would that point of land be approximately in 1897?

A. Along about in here, right opposite Woodland Plantation,—Woodland Landing.

Q. In other words, Newman's tow head had gone away out here in 1913, is that right?

A. Let me see here. Let me understand this. Here is Oakland here. This is Woodland here. Oakland was about the middle of the river.

Q. The land moved as the river moved?

A. Yes, sir; moved back.

Q. Then you would say that was about four or five miles?

A. Just about that far.

Q. Did you ever know of the water running across here at the point on which I hold my finger—this place here?

A. A little bit on the ground, but I have never seen the water go through there. It never broke through.

Q. How high was the water when you observed this in 1912?

A. It was high water then.

[fol. 37] Q. It was out over the ordinary banks of the river?

A. Yes, sir; extremely high water.

By Mr. Henry:

Q. You said, Captain, that the tow head was the highest point on the sand bar?

A. No, sir; I did not say that.

Q. You did not say that?

A. I said that a tow head was a high point on a sand bar where willows and trees had begun to collect, and also alongside of the island.

Q. Also what?

A. Also along side of an island.

Q. Then you don't say that a tow head is the highest point on a sand bar?

A. No, sir; I don't say that.

Q. You say you don't say it?

A. No, sir.

Q. Now, this sand bar projects out in the river, and is made by accretions, is it, and the point where it strikes the river is its lowest point, is it?

A. Yes, sir.

Q. Now, a tow head, if one has been formed, is higher than the point where it reaches the river? Is that true?

A. It takes a tow head——

[fol. 38] Q. (Interposing.) Just let me have an answer to my question, Captain. A sand bar gains and grows out in the river, and where it meets the river it is of necessity its

lowest point? That is the lowest point on the sand bar, is it not?

A. Yes, sir.

Q. Now, the tow head which has been formed is higher than the point at which the sand bar reaches at the river is it?

A. I can't answer your question, Judge.

Q. Why can't you?

A. Because a tow head is usually the highest point on a sand bar.

Q. That is what I said and that is what you said. Now a tow head is the highest point on a sand bar in the river is it?

A. Yes, sir.

Q. That is what I asked you. Now then, you say that tow head formed in front of Willow Point?

A. No.

Q. Well, about that? Around the bend there at Willow Point?

A. The tow head it was formed when the river came up and surrounded in high water time.

Q. Captain Prince, I understood you to say a tow head was formed on a sand bar that came out from Willow [fol. 39] Point? Is that true?

A. Newman's tow head. That is the name.

Q. Newman's tow head?

A. Yes, sir.

Q. That is it?

A. Yes, sir.

Q. That is a tow head is it?

A. Yes, sir.

Q. How far did that tow head form from the bank of the Louisiana shore?

A. Well, it commenced right up the Louisiana shore and run down the river about four or five miles.

Q. You say that it started right at the Louisiana shore?

A. Yes, sir; that is, the sand bar.

Q. I am talking about the tow head.

A. I am talking about the tow head. The tow head was made up when the water came up.

Q. I don't care when it made. How far was that tow head when it first formed from the Louisiana shore on the sand bar?

A. It was all sand bar until it was cut off.

Q. I know that it was a bar. You understand my question, do you?

A. No.

Q. Captain Prince, here we have Willow Point and a sand [fol. 40] bar formed around Willow Point, as you say. That is true, is it?

A. Yes, sir.

Q. Where did that tow head form in the sand bar in front of Willow Point? How far from the main land?

A. Where the cut off was made.

Q. Now, a tow head—I will try it again—formed on the sand bar in front of Willow Point. How far was the tow head from the bank, the Louisiana bank, on that sand bar?

A. The foot of it was about four miles.

Q. I am talking about the first one that you said was formed. I am not saying down the river. I mean how far east?

A. I cant tell you.

Q. Why cant you tell?

A. Because I don't remember the points of the compass there.

Q. How far was it from the Louisiana shore on the sand bar in the direction of Mississippi—I mean the tow head. Now, I don't care whether it was northeast or southwest. I just want to know how far the tow head was from the main bank of the Louisiana shore?

A. It extended from Willow Point down along the bend of the river opposite Woodland Landing, about four miles.

Q. That comes down south along the river, does it?

A. Yes, sir.

[fol. 41] Q. It did not form along down there four miles did it?

A. No, sir.

Q. How far was it from the shore, the Louisiana shore in the sand bar when it formed?

A. How far from the shore?

Q. Yes, sir; that is what I'm asking you?

A. I tell you, Judge, I don't know. If you know what a tow head is——

Q. I know what you told me. You just told me what one was, but no matter whether I know about it or not——

A. Well——

Q. I have heard them called different things from what you have said. I have heard other river men say that they grew up from the river and formed without being tied to a stationary sand bar. Have you ever seen a sand bar in the middle of the river?

A. Yes, sir; and watched them grow.

Q. And tow heads form out on them, don't they?

A. Yes, sir.

Q. Certainly, and they are not connected with either shore of the river, are they?

A. Sometimes.

Q. Sometimes, and sometimes not?

A. Yes, sir.

[fol. 42] Q. And you say that the sand drifted up and made the formation called a tow head? That tow head on the Louisiana shore, we will call it?

A. Yes, sir.

Q. Now, here is Willow Point, is it Captain?

A. Yes, sir.

Q. And here is the Mississippi side of the river?

A. Yes, sir.

Q. The sand bar formed on the Louisiana side and began extending out, did it?

A. Yes, sir.

Q. Now, going out. Instead of going down, it extended out how far? How many hundred yards was it from the shore out where that tow head first started, first had its inception?

A. About 400 yards where the cut off took place.

Q. About 400 yards?

A. Yes, sir.

Q. Now, it is true, that there were high points on that sand bar, as you say?

A. Yes, sir.

Q. Then the high points would show an elevation up above the other land both towards the Louisiana shore and towards the Mississippi shore, would it?

[fol. 43] A. Elevation—how?

Q. An elevation. Higher than what it was behind it and higher than what it was in front of it because these trees and bushes on it would catch the sand as it was blown and carried up there as you have explained?

A. Yes, sir.

Q. Then the elevation was higher? It must be?

A. Yes, sir.

Q. If that be true then, if that be true that it was 400 yards from the Louisiana shore—you say it went down the river—call it down the river?

A. Yes, sir.

Q. Now then, if that be true, the tow head forming first, ought to have the heaviest timber on it, ought it, and was higher?

A. Yes, sir.

Q. Then, if there was a difference between the tow head elevation and the sweep across from that tow head over towards the Mississippi shore, it will show a different elevation in the tow head, will it?

A. Yes, sir.

Q. It is bound to do it?

A. Yes, sir.

Q. Now, where the cut off was made you never knew whether that was the old bed of the Mississippi River or [fol. 43½] not, did you, in there on Willow Point?

A. Never in my time; no, sir.

Q. You don't know that now?

A. No, sir.

Q. Now then, did the old bed of the Mississippi river ever fill up in between the Louisiana shore and that sand bar?

A. So far as I know it did not.

Q. That's what your statement is here to the court?

A. Yes, sir.

Q. Now, you say after the cut off of 1912 the Mississippi river began to fill up from Tennessee landing. Tennessee Landing is in Mississippi?

A. Yes, sir.

Q. That is Tennessee plantation?

A. Yes, sir.

Q. And it began to fill up at Tennessee plantation. How far is that north relative to Willow Point?

A. About four miles.

Q. Is it four miles north of Willow Point?

A. Yes, sir.

Q. And the river began to fill up at that point, did it, Captain Prince?

A. Yes, sir.

Q. Did the Mississippi shore make any advancement,—make land?

[fol. 44] A. From Tennessee Point it did.

Q. Yes, sir; and anywhere else?

A. No where along Albemarle Bend.

Q. Albemarle Bend, that is the old Chotard place?

A. Chotard is in front of the Bend.

Q. Did it make land any there?

A. No, sir; very little.

Q. Do you know of a great big bar in front of Tennessee Landing?

A. Yes, sir.

Q. How wide would you say that water is there along Tennessee Landing going towards the Louisiana shore from the Mississippi side?

A. About close to a mile wide.

Q. Is that all?

A. Well, I don't know about that.

Q. You don't know then how wide it is?

A. I know it is that much, but I don't know whether it is more or not.

Q. You don't know whether it is more or not? You say that you don't know whether it is more or not, Captain? Is that what you say?

A. No; I don't know.

Q. That is what I thought. Now, how far down the river from Tennessee Landing does it extend right now?

[fol. 45] A. More than four miles.

Q. In other words, after the cut off was made and formed at Tennessee Landing it extended four miles below and you say was a mile wide, and maybe more?

A. Yes, sir.

Q. Does Louisiana claim that?

A. I don't know.

Q. That never attached to any tow head, did it?

A. No, sir.

Q. But the bar extended down the river, you say, about four and a half miles from Tennessee Landing?

A. From Tennessee Point.

Q. I mean Tennessee Point.

A. Yes, sir.

Q. Now, Captain, you don't know anything about 1890, do you?

A. No, sir.

Q. When you went on the river in 1897 did you go up through Albermarle chute?

A. I don't know where Albemarle Chute is without you call it Albemarle Bend.

Q. What do you call Albemarle Bend?

A. That was between that river up until 1912-1913.

Q. You don't know where Albemarle Chute was or what it was?

A. I don't know what you call Albemarle Chute. I don't [fol. 46] know where it is.

Q. You don't know?

A. No, sir; I know where Albemarle Bend is. I have been through there many a time.

Q. You said you were on a tow boat in 1897?

A. Yes, sir.

Q. Were you carrying frieght to New Orleans?

A. No, sir; towing timber.

Q. Towing timber?

A. Yes, sir.

Q. For whom?

A. Fisher Lumber Company, and other different lumber companies. The Burton Lumber Company.

Q. To New Orleans?

A. Yes, sir.

Q. And you say that you had been observing that place from six to ten times a year?

A. Yes, sir.

Q. Where would you get the timber from—where would you get the timber?

A. From different points.

Q. Well, tell me where it was?

A. Well, Caroline Bar.

Q. Where is Caroline Bar?

A. Caroline Bar is about 110 miles above Vicksburg.

[fol. 47] Q. How far is Willow Point above Vicksburg?

A. About forty miles.

Q. You got it from Caroline Bar. Is that on the Mississippi side or on the Arkansas side?

A. The Mississippi side.

Q. Well, where else did you get it from?

A. From Pittman's Landing.

Q. Where is Pittman's Landing?

A. Pittman's landing is along north of it on the Mississippi bank of the river.

Q. How far from Vicksburg?

A. About a hundred miles.

Q. That would make it up about Greeneville, would it not?

A. No, sir; south of Greeneville.

Q. How far is Greeneville from Vicksburg?

A. It is 150 miles.

Q. Yes; that is right. I know now. Well, where else?

A. Well, at a number of places. I don't just recollect them now. I can't recall.

Q. You were not in the towing business all the time that you were on the river, were you?

A. No, sir; not all the time.

Q. When was it that you first got on the river? When did I understand you to say that you first went on the river, Captain?

[fol. 48] A. I was on the river from the fall of 1897 until 1902.

Q. In what business?

A. Tow boat business.

Q. And you went to those two points you have named——

A. We went every where.

Q. Where did you go?

A. We landed all along the river.

Q. You did?

A. Yes, sir.

Q. With a barge?

A. Wherever we had business we landed.

Q. You would land with a barge? I understood you to say you were towing logs?

A. Yes, sir.

Q. And that was your business?

A. Yes, sir.

Q. So your business was to land and pick up logs, and you have told me two points that you have done it. That is all that you have told me, is it?

A. We towed them out of Eagle Lake.

Q. That is not up any further, is it?

A. No, sir.

Q. So that would not have anything to do about trying to find out whether you are in a position to know about these other things. The three points from which you say you got [fol. 49] these logs, two of them was above this point in litigation, and the other was below it?

A. Yes, sir.

Q. And those are the facilities and the chances you had to know the river?

A. Yes, sir; I had to know the river.

Q. You do not know anything about the river prior to 1897?

A. No, sir.

Q. Very well, Captain, that is all.

(Witness excused.)

ERNEST NEWMAN, having been called as a witness on behalf of the complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Dale:

Q. State your name, please?

A. Ernest Newman.

Q. What is your age?

A. I am thirty-seven.

Q. Where were you born?

A. In East Carroll Parish, Louisiana.

[fol. 50] Q. At what point in East Carroll Parish, Louisiana?

A. Willow Point Plantation.

Q. Now, I will refer you to a map marked Plaintiff's Exhibit C, or Complainant's Exhibit C, I should say, and will ask you if the place marked Willow Point on that map is the place you have referred to—the Willow Point Plantation that you referred to?

A. Yes, sir.

Q. That is the Willow Point you referred to, which is above Henderson's Landing?

A. Yes, sir.

Q. And below——

A. Salem.

Q. Salem?

A. Yes, sir.

Q. Who owned that place at the time?

A. Walter A. Newman.

Q. Was Mr. Walter A. Newman a relative of yours?

A. My father.

Q. What year were you born?

A. November 8, 1888.

Q. How early or how far back do you recollect the conditions that existed with regard to the river there in front of Willow Point Plantation?

A. Well, I remember as far back as 1897 when I helped [fol. 51] drive cattle off the bar at this time.

Q. As far back as you can recollect about how far back had the bar extended from the main land, had that Willow Point extended out from the main land?

A. Do you mean back as far as I can remember?

Q. Yes, sir; in 1897?

A. I suppose about three miles—about three and a half miles.

Q. Did it or not continue to extend out?

A. Yes, sir.

Q. Did the bar grow?

A. Yes, sir.

Q. How far did it grow after; how far did it extend towards the Mississippi shore?

A. A mile and a half or two miles.

Q. How far would you estimate that it had extended altogether from the main shore up till the cut off of 1912?

A. About four and a half or five miles, I suppose, as near as I can judge.

Q. How long did you live at Willow Point?

A. Until 1907.

Q. After you left Willow Point Plantation where did you go, Mr. Newman?

A. Lake Providence.

Q. Is that in the same parish?

A. Yes, sir; about 25 miles north of Willow Point.

[fol. 52] Q. Well, did you afterwards visit Willow Point?

A. Yes, sir; I visited there frequently hunting geese.

Q. How frequently?

A. Practically every winter.

Q. Where did you visit Willow Point Plantation after you moved from there?

A. We had a camp in there, a cabin, and we would come down there for a number of years hunting.

Q. Your old home was on Willow Point plantation?

A. Yes, sir; and after we moved off we kept that camp down below.

Q. Was there a levee near your home?

A. Yes, sir; the State Levee ran about fifty or 100 yards behind out house.

Q. At the time of your earliest recollection?

A. Yes, sir.

Q. Do you know whether or not the State Levee was subsequently moved back further?

A. Yes, sir.

Q. Moved further back?

A. Yes, sir.

Q. How far?

A. About two and a half miles.

Q. Do you recollect the character of timber on the main land?

[fol. 53] A. Yes, sir.

Q. What was it?

A. On the main land?

Q. Yes, sir?

A. Cottonwood and willow principally; some gum and some oak.

Q. What was the character of the timber on what was called Willow Point?

A. Outside the levee?

Q. Outside the main shore?

A. Principally cottonwood and some willow.

Q. Was there an island between Willow Point and the main shore from your earliest recollection in 1897——

A. No, sir.

Q. Wait until I finish my question—until the cut off in 1912?

A. No, sir; there was not.

Q. Do you recollect about the time the cut off occurred?

A. Yes, sir.

Q. When was it?

A. About 1912 or 1913.

Q. Now, what do you mean by "cut off?"

A. Well, the river changed its channel. It cut through that sand bar—cut all the way through it—cut across this point.

[fol. 54] Q. Do you know anything about the presence on that bar prior to the cut off that was called Newman's Tow head?

A. Yes, sir.

Q. What condition was this bar—this Newman Tow head at the time of your earliest recollection?

A. What?

Q. Was the Newman tow head there as far back as you can recollect?

A. Yes, sir.

Q. Was that connected with the main shore—with the main Louisiana shore?

A. Yes, sir.

Q. Was the river or anything of that sort between Newman's tow head and the main shore of Louisiana,—the main Louisiana shore?

A. No, sir.

Q. Could you go on that land at the various stages of the water from the main shore, on the Louisiana shore, on Newman's tow head?

A. Yes, sir.

Q. Where was the main channel of navigation in the Mississippi River as to the Newman tow head from the time that you can recollect?

A. On the east side.

Q. Between Newman's tow head and the Mississippi shore?

A. Yes, sir; on the Mississippi shore.

[fol. 55] Q. After the cut off of 1912 which side of the channel did it leave Newman's tow head?

A. On the east side.

Q. On the Mississippi side?

A. Yes, sir.

Q. Do you recollect whether or not—as you say, the bar extended out, the Willow Point Bar, which belonged to your father—extended out eastwardly towards the Mississippi shore, if the Mississippi shore was caving?

A. Yes, sir.

Q. Do you know whether any revetment work had been done there by the United States Government?

A. Yes, sir; I know that they had been over there, but I don't remember just exactly what year it was. But I knew their boats had been there on several occasions putting down mats.

Q. What was the character of the timber on Newman's tow head?

A. Willow and cottonwood.

Q. What was the size of the timber on Newman's tow head in 1897, as well as you can recollect?

A. About eight or ten feet high.

Q. What was the size of it, as well as you can recollect, at the time of the cut off in 1912?

A. There was some good size timber on it at that time and I reckon some was about eighteen inches in diameter.

[fol. 56] Q. Do you know what size trees are now on that Newman tow head, which is now on the east side of the Mississippi river—do you know what size timber is on that land now, Mr. Newman?

A. No, sir; I don't know exactly how it is. I have never paid much attention to it.

Q. Who claimed Newman's tow head?

A. We did.

Q. How did it get your name?

A. By our family living on it—on Willow Point Plantation—the Newman family.

Q. You say, do you, that Willow Point and Newman tow head was considered as belonging to your father?

A. Yes, sir; we had cattle running on it—a cattle range on it.

Q. Do you know where it was you paid taxes?

A. Yes, sir.

Q. Where?

A. East Carroll, Louisiana.

Q. Did you pay any in Mississippi?

A. No, sir.

Q. Did you ever hear of such an island existing as Tullow Island?—

A. I can't say. I have heard that, as a general report, that there had been such an island. I don't remember it [fol. 57] at all.

Q. Has there such an island existed since you can recollect?

A. No, sir.

Q. Up to the time of the Newman cut off there was no island at all in the Mississippi river at that place?

A. No, sir.

Q. The first island made there was by the cut off cutting apart the Newman bar and leaving it on the east side of the river, is that true?

A. Yes, sir.

Q. When did you first hear of this land on the east side of the Mississippi River being claimed by the Mississippi representatives?

A. Mr. Guilfoyle spoke to me about it—about being a witness in this case. He is a lawyer in Lake Providence.

Q. You never knew of it until this year when you were requested to be a witness in this case?

A. That's the first time that I ever knew of it; yes, sir.

Q. Do you know anything about the sections or townships over on the Mississippi side of the river?

A. No, sir.

Q. That is all.

Cross-examination.

[fol. 58] By Mr. Butler:

Q. Do you know what description your father's plantation was—Government numbers?

A. No, sir; I do not.

Q. You don't know them at all?

A. No, sir.

Q. Do you know what township and range it was in?

A. No, sir.

Q. Do you know whether it was in lots or government quarters?

A. No, sir. It was entered by my grandfather years ago.

Q. Did your father live there?

A. Yes, sir; he died there.

Q. Do you know how your father paid his taxes?

A. Do you mean where he paid them?

Q. Was it by government divisions or——

A. (Interposing.) No, sir; by assessment—ordinary assessment?

Q. Do you know the first time that he paid the taxes on that land?

A. No; I don't.

Q. You have a custom over in Louisiana in paying your taxes to show a description of your property—the approximate number of acres, do you?

[fol. 59] A. I don't believe I do; no, sir.

Q. What?

A. I don't think so; no, sir.

Q. Isn't there a place on the assessment rolls to show the description of the land and how many acres in the tract?

A. I believe that it would show on the assessment roll but it would not show on the receipt. I don't think that it shows on the receipt.

Q. Shows on the assessment roll?

A. Yes, sir.

Q. Did you or your father or any one connected with this Newman plantation, at any time have assessed in Louisiana this part running out there from three and a half miles or more that you have been talking about?

A. I don't know that we were ever *were* assessed with it; no, sir.

Q. You don't undertake to say that this land was not assessed in Mississippi from 1823 on up to 1896?

A. I can't say about that.

Q. Did you ever pass by Island No. 98?

A. No, sir.

Q. Did you ever hear your father talk about Island No. 98?

A. I might have heard just general talk mentioned [fol. 60] casually about there having been an island over there, I believe, a little bit north of Chotard, by that name, or Tullos Island,—Island No. 98.

Q. Do you know anything about St. Francis Chute?

A. Yes, sir.

Q. In 1897, how far east of St. Francis Chute to the head of it?

A. Which direction,—east?

Q. Yes, sir.

A. It was very near at St. Francis at that time. There was a sand bar up beyond, right between—it might be going east. It is about four or five miles.

Q. In 1897?

A. Yes, sir; from the lower end from St. Francis to the tow head it is quite a stretch.

Q. Do you know where Henderson's Landing is?

A. In Mississippi?

Q. Yes, sir.

A. Yes, sir.

Q. Do you know whether a sand bar formed there except down in a southeast direction?

A. I don't know of any sand bar over there.

Q. You don't know anything about even a bar over there?

A. No, sir.

Q. Do you know anything about some vessel being sunk [fol. 61] over there and a sand bar formed and extended across and cut off the original channel there?

A. Around by Duvall's?

Q. I don't know about Duvall's. I am talking about the Tennessee Bar.

A. Is that one—Well now, let me see. There is Magna Vista and Duvall's. It may be that one went out above Tennessee Landing.

Q. Tennessee Landing is northeast of your father's plantation, isn't it?

A. No, sir; Duvall's landing is northeast.

Q. Do you know where Dumbarton's landing was?

A. No, sir; that must not have been a big landing.

Q. Do you know where it is?

A. No, sir.

Q. And Ingomar?

A. Yes, sir; that is further down the river.

Q. Let me go back. Do you know whether Dumbarton—whether Tennessee Landing is further up the river than Dumbarton's landing?

A. No, sir; I don't know.

Q. Do you know where Rawlings Landing was?

A. Yes, sir.

Q. Where was that?

A. North of Willow Point on the Louisiana side.

[fol. 62] Q. Do you know where Duvall's landing is?

A. Yes, sir; noetheast of Willow Point on the Mississippi side.

Q. And Ingomar?

A. Yes, sir; that is further down the river.

Q. Alnemarle plantation?

A. No, sir; I don't know that.

Q. Did you know Maj. Higgins?

A. No, sir.

Q. Do you know when his plantation caved into the river?

A. No, sir; I did not know him, and I did not know of his plantation at all. I never was over on the Mississippi side,—on that side.

Q. You don't know whether there was a small channel that separated Maj. Higgins' plantation from the shore line or not, do you?

A. No, sir; I do not.

Q. Do you know where the Purnell plantation is?

A. No, sir. Mr. Purnell came across the river to hunt with us quite a number of times, but I don't know where his plantation was.

Q. You don't know whether a small channel separated his plantation from the shore line or not, do you?

A. No, sir.

Q. Now, the Brown plantation, do you know where that [fol. 63] was?

A. No, sir.

Q. You dont know whether there was a small channel that separated the Brown plantation from the main channel of the river or not, do you?

A. No, sir.

Q. Do you or not know where the Chilton Plantation was?

A. No, sir.

Q. You dont know whether there was a small channel that separated the Chilton plantation from the main channel of the Mississippi River or not, do you?

A. No, sir.

Q. You dont know whether there was an island over there or not, do you?

A. Not along from the Mississippi shore. I have been all the way around that shore.

Q. Do you know whether there was or not?

A. I know there was no island. I have been all the way around on that river there.

Q. Any channel along there or not?

A. No, sir; not that I know of.

Q. What?

A. No, sir; not that I know of.

Q. Do you know where Chotard Landing is at present?

A. Yes, sir.

[fol. 64] Q. Is there or not a body of water extending in a general northerly direction from the present Chotard Landing?

A. Yes, sir; behind this island.

Q. And forms a lake, does it?

A. Practically it does.

Q. What do you mean by practically?

A. It is a lake in low water, and ordinarily there is no river. It is just a chute that goes back in there.

Q. Well, does the chute extend on across up Albemarle plantation and go back into the river?

A. It does not go back in the river now.

Q. That goes down to the Tennessee bar,—extends down and connects up?

A. It does not connect up with the bar. It extends down there a little at the cut off.

Q. How large is the largest cottonwood timber, Mr. Newman that is growing down there on that point you call the Newman tow head, at this time?

A. I would have to know the measurements of it in order to be accurate. I would have to be there to tell you that. I jusge it to be about two feet.

Q. Would you be surprised to learn that some of it was over three?

A. Why, no, sir; a quite a few there might be that large. It will grow very rapidly on that sand bar.

[fol. 65] Q. Do you know where the old river channel of 1823 south of Willow Point plantation was?

A. Where the old river channel was?

Q. Yes, sir?

A. No, sir; I didn't know there was an old river channel in there.

Q. Does not the water back up in the old channel now?

A. There is a little chute that runs off from Henderson, but there has never been no channel—just a little chute behind the bar.

Q. Dont you know that when the water is high now that it goes up the old channel for more than a mile? I dont mean when it overflows, but just when there is a comparative high stage of the water?

A. There is just a kind of a slough there that runs up to Henderson's, and it has been there ever since I can remember.

Q. And that is approximately east of the land down there in Lot 8, south of Willow Point plantation?

A. Where? I didn't hear you.

Q. It is a point approximately east of Lot 7 and Lot 8, a general southeast direction from Willow Point plantation, is it?

A. No; it is almost due south.

[fol. 66] Q. Have you seen the map delineating the property which it is claimed accreted to the Louisiana side,—to the Willow Point plantation?

A. What?

Q. Have you seen the map showing or disclosing the property which the State of Louisiana claims in this case accreted to Willow Point plantation?

A. Yes, sir.

Q. This map shows Willow Point plantation as Lots 6, 7 and 8 on the Louisiana side, does it not?

A. Yes, sir.

Q. That is Exhibit J. It shows the Newman tow head going out here in a general northeast direction for five or six miles?

A. Yes, sir.

Q. Now, there is more than five thousand acres of land in that map, is there not?

A. Yes, sir; I would judge there would be.

Q. Now then, did the State of Louisiana, or your father, or anybody else who ever owned this property at any time ever assess themselves with the 5,000 acres of land shown here on this Newman tow head, Exhibit J, for taxes on it?

A. Well, I hardly think so. When the levee was moved back our taxes at that time were considerable reduced. We did not have very much taxes over there. They moved the

levee back two and a half miles and put us outside of the [fol. 67] levee, and we had practically no taxes.

Q. This land was not carried on the assessment rolls?

A. I don't know whether it was or not. We used it as a range—had cattle out there on the range.

Q. Where was the old channel as shown on the map?

A. There never was a channel in there as I remember. Not that I can remember.

Q. St. Francis chute?

A. That little belt of white sand that came down from the main shore. There is another island here covered with timber. This in here is larger than this, because this was made first. This was made first over here. That was made and the sand bar extended out and another one was made in here, but there was no channel through there.

Q. Now, is Willow Point plantation—was it Lots 6, 7 and 8 right in here?

A. I believe it was; yes, sir.

Q. That's where it was, wasn't it?

A. Yes, sir.

Q. Now, isn't the old channel right here about, right along down here in this direction?

A. I don't know of any channel in there.

Q. Isn't it right there today?

A. Not that I know of.

Q. From eight to ten feet lower than this land up here in Section 30 and this land down here in 31, right there on [fol. 68] the ground today?

A. Well, there may be, but you see this chute that comes through here is a little narrow chute that comes down along the main shore, not in the island. The current in high water will pass up through here, and comes over seven or eight miles around the bend, and we call that St. Francis.

Q. I want to ask you if you would go in there today if there is not a clear delineation of this channel up in Sections 21 and 20?

A. Do you mean on the island that has been cut off?

Q. Yes, sir?

A. No, sir.

Q. Do you know where this man lived that had a little camp over there on section 20?

A. After that cut off?

Q. Yes, sir? Since 1912. You have been down there every winter?

A. I have not been down there all along, but I have been down there hunting geese.

Q. Do you know whether or not there are a lot of cottonwood trees growing down there on Section 20 upon an elevation of some ten or fifteen feet above the present willow brake in there, from which all of the sand has washed away from the roots of the cottonwood trees? You have seen that down there on those willow banks, have you?

A. Yes, sir; I remember when the sand was put in there, [fol. 69] built in there, and the black sand back on top.

Q. Now, you say you remember that it was built in there?

A. Possibly; yes, sir.

Q. When was it built in there?

A. Well, it was in 1903, in the high water of 1903, a good deal of it.

Q. There never has been any channel around this way since you can remember?

A. The river broke away early in 1916.

Q. And you think it washed away——

A. (Interposing.) The channel has always been around this way.

Q. That is what we thought, thank you. When you say around "this way," you follow the line south?

A. Is this Tullos Island and this the cut off? The river always, ever since I can remember, has been on the east side of Willow Point, that is, until the cut off of 1912 and 13.

Q. I refer now to a line on Exhibit G, that runs across Sections 18, 17, a corner of 16, and 21, across 28, and back around here. Do you know whether Section 16 all went into the river or not?

A. I don't know about any section at all.

Q. In 1894 did section 16 all go in to the river?

A. I don't know.

[fol. 70] Q. Didn't Issequena give another section for a school house over there because it caved in the river in 18-4?

A. I don't know.

Q. That the sudden break in the river around there washed away Section 16?

A. No, sir; I don't know that.

Q. Do you know, or do you say that Section 30 here, approximately east of Section 8, which is identified as being a part of Willow Point plantation——

A. (Interposing.) I am not positive about any section. I am not acquainted with the sections at all.

Q. I am talking about the Louisiana side?

A. That seems to be the location of it.

Q. Section 30 is approximately east. Now, how large are the largest cottonwood trees growing over there?

A. I don't know.

Q. Have you been over there lately—along in there?

A. Do you refer to this——

Q. (Interposing.) I am talking about this growing on Section 30.

A. I don't know. I have never been on 30.

Q. You have never been on 30 in your life?

A. Not that I know of.

By Mr. Dale: We object to that for the reason that it is misleading, in that he points out to the witness a section [fol. 71] formerly indicated as a part of Tullos Island, and the witness has stated that there was no Tullos Island that ever existed within his recollection.

By the Commissioner: Let the objection be noted, and it will be consider- at a later date, when the whole testimony is considered.

By Mr. Butler:

Q. Do the Newman people still claim the Louisiana side?

A. No, sir.

Q. Who did you sell it to?

A. Martin Hamley, of Lake Providence.

Q. When was that?

A. I don't remember exactly, but about 1908 or 1909.

Q. After you claimed that it had formed there?

A. Yes, sir.

Q. How many acres of land was in that deed?

A. I don't know.

Q. Did you know at that time anything about an open plantation being over there on this land on what was called Newman's tow head in 1896?

A. An open plantation?

Q. Yes, sir.

A. There was no plantation over there.

[fol. 72] Q. You say there was not?

A. Not in 1896,—not on the Newman Tow Head.

Q. On what you say was the Newman tow head?

A. No, sir; I don't know anything of it. I never heard of it. I don't remember riding over it until about '97. I kept the cattle off of that tow head in '97. The water in '97 was high and came through the depression on *the* where the channel came through afterwards. The water came in and I had to go through with a boat and run these cattle off.

Q. That was in '97?

A. Yes, sir.

Q. How old were you then?

A. Nine years old, I reckon. About nine years old.

Q. You don't know anything about a plantation being there in '96?

A. No, sir.

Q. Do you know about when Section 16 went into the river?

A. I don't know about Section — at all. I can't tell you about that.

Q. But anyhow, you didn't know of any plantation being over there on the tow head?

A. No; I did not. Not to my recollection there never has been any plantation there.

Q. That is all.

[fol. 73] Redirect examination.

By Mr. Dale:

Q. Counsel for defendant have been asking you about Exhibit G, which shows the survey of December 22, 1823. Can you recollect that far back.

A. No, sir.

Q. Do you know anything about the section numbers as they existed in 1823?

A. No, sir.

Q. Do you know anything about the Section numbers in Louisiana or Mississippi as they exist now?

A. No, sir.

Q. Have you ever known?
A. No, sir.
Q. Could you locate a section number?
A. No, sir.
Q. When you were asked about the section numbers here in Section 20 and Section 21, which was on Tullos Island in 1923, you say that you don't know anything about such an island existing as Tullos Island?
A. I have heard of it, but have never seen it.
Q. Has any such island ever existed in your recollection?
A. No, sir.

(Witness excused.)

[fol. 74] The hour of adjournment having arrived, a recess is here taken until 9 o'clock A. M., Tuesday, October 5, 1926.

Tuesday morning, October 5, 1926, at 9 o'clock met pursuant to the above adjournment, and the taking of depositions in this cause is proceeded with.

All parties present as of yesterday.

GEORGE R. NEWMAN, called as a witness on behalf of the complainant, having been duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Dale:

Q. You are Mr. George R. Newman?
A. Yes, sir.
Q. Mr. Newman, how old are you?
A. I am forty years old.
Q. In what year were you born?
A. In 1886.
Q. Where were you born?
A. Willow Point, Louisiana.
Q. We had better identify Willow Point. Let us get the map there No. C which has been introduced in evidence [fol. 75] heretofore, and I wish you would look at the map and notice the point on that map, or the place marked "Wil-

low Point," and I will ask you whether or not that is the Willow Point you refer to when you say you were born on Willow Point plantation?

A. As near as I can judge it is.

Q. I will ask you to state if the Willow Point to which you refer is the Willow Point just above the Henderson Plantation?

A. Yes, sir.

Q. Do you see Henderson plantation on that map?

A. Yes, sir.

Q. Hunt up Salem Plantation on that map.

A. I don't see it.

Q. Well, hunt it up if it takes you half a day.

A. Here is Pecan Grove here. I don't see any Salem.

Q. Do you see Raleigh?

A. Yes, sir.

Q. Do you see a red line marked back from Raleigh where Salem is marked? A distance back?

A. Yes, sir.

Q. Do you know whether there is a Salem Landing or not?

A. Yes, sir; there used to be a Salem Landing there.

Q. There used to be?

[fol. 76] A. Yes, sir. There might be now. I have not been there for a couple of years.

Q. Is the Willow Point plantation shown on the map, is that the one you refer to as having been born on?

A. Yes, sir.

Q. The place where you were born?

A. Yes, sir; the place where I was born.

Q. Who owned, if you know, Willow Point plantation at the time you were born?

A. My father.

Q. What was your father's name?

A. Walter R. Newman.

Q. And who is Mr. Ernest Newman, who testified on yesterday—any relation of yours?

A. Full brother.

Q. Is your father alive?

A. He is dead.

Q. Who was your mother?

A. Miss Beard.

Q. Her maiden name was Beard?

A. Yes, sir; Florence Beard.

Q. Was she any relation to Mr. I. D. Beard, who is here as a witness?

A. A sister.

Q. Is she living or dead?

A. Dead.

[fol. 77] Q. How far back can you recollect distinctly the conditions existing at Willow Point plantation with reference to timber, bars, and so forth?

A. About '93 I reckon. Along about that time.

Q. How old were you then?

A. Between five and six.

Q. You were born in '86?

A. Yes, sir; '86.

Q. And in '93 you would be seven?

A. Yes, sir; six or seven along in that time.

Q. Did you—what did you do, if anything, along about that period, at about that age?

A. Well, I could ride, and I went around with my father over the place. I rode, and started hunting at that time.

Q. Where were you hunting and where did you ride?

A. Over the field and on the sand bar,—over on the sand bar.

Q. What sand bar?

A. Willow Point sand bar.

Q. You rode all over Willow Point sand bar?

A. Yes, sir.

Q. Did you ride back of the Willow Point sand bar?

By Mr. Henry: We don't want to be captious, and are willing to give you all the lat/itude possible, but that question is so leading that we will just have to object to it. That [fol. 78] one and other- like it.

By Mr. Dale:

Q. Did you ride back from the river on Willow Point sand bar?

A. Yes, sir.

Q. Do you know where the original land was and where the sand bar was?

A. Well, where I imagine it was, from what they told me then, where the sand bar hit the main shore.

Q. How do you tell where the sand bar hit the main shore?

A. From the change of the land and the timber that was on it.

Q. What was the character of the timber on the main shore that you refer?

A. Well, there was cottonwood and willows, and a few other big trees, pecan and *sc*y*a*more.

Q. Gum and oak?

A. Some gum and some oak scattering. There was some cleared land in there.

By Mr. Henry:

Q. Are you testifying at the time that you were five years old? That's what your testimony is now is it?

A. Yes, sir.

Q. Go ahead.

By Mr. Dale:

Q. I will ask you if you had been over those places con- [fol. 79] siderable after you were five or six years old?

A. Yes, sir; I lived there.

Q. Is the condition just the same now, so far as the original bank is concerned, as it was when you can first recollect?

A. Yes, sir; but the bank—what bank is left there.

Q. Is there a depression or not at the place where you speak of as the old original main land?

A. It is right there now.

Q. What is the character of timber on what you call the Willow Point bar?

A. Cottonwood and willow.

Q. How far from what you call the main land was your home, as you recollect?

A. Well, it was about 100 yards, I reckon, where the house was at.

Q. Was it inside or outside the levee?

A. Next to the river.

Q. It was outside the levee then?

A. Outside the levee.

Q. Between the levee and the river?

A. Yes, sir.

Q. The levee as then was built, and was it after that time moved further back?

A. About two miles and a half.

[fol. 80] Q. How far was it from the main land to the end of the timber towards the Mississippi river when you can first recollect?

A. How far was it from the end of the timber to the Mississippi river?

Q. From the main land over to where the timber stopped growing?

A. About a mile and a half I reckon across the bar.

Q. How far out would the bar extend, as well as you recollect, beyond the timber, that part that had no timber on it?

A. Well, there was a depression that had no timber on it, and that was very narrow, and then there was a bunch of timber there, and from that out I reckon it was about a mile.

Q. How far was it from what you have termed the main land out to the water's edge, as well as you can recollect?

A. About a mile and a half. Something like that. Maybe a little more, as near as I can remember. I did not pay any attention to it then.

Q. Did or not the bar extend in an easterly or northeasterly direction towards the Mississippi shore after you can first recollect?

A. Yes, sir; it did all the time further over here.

Q. And got larger and larger every year?

[fol. 81] A. Yes, sir.

Q. Was it a continuous bar all the way out?

A. Yes, sir.

Q. Could you walk from the main land at all times out to the river?

A. Yes, sir.

Q. How long did that condition exist?

A. How long did it exist, did you say? How long did it exist?

Q. Yes, sir; how long did it exist during your recollection?

A. Up until '12.

Q. 1912?

A. 1912, when it caved off,—cut off.

Q. Before the cut off in 1912, could you have walked out over the entire bar to the river's edge?

A. At any time except in high water. Real high water.

Q. Do you know whether or not prior to the cut off in 1912, during the period of your recollection, there was an island in the river—the Mississippi side of the rover, or an island at that time in front of the Willow Point plantation on which you were born and the main land of the Mississippi river, Mr. Newman?

A. None that I know of; no, sir.

Q. Were you well acquainted with that particular section out in there?

[fol. 82] A. Yes, sir.

Q. You were born there?

A. I was over there off and on all the time.

Q. Do you know, and can you tell us whether it is a fact whether there was or was not an island in there?

A. No, sir; there was no island there.

Q. You know positively that there was no island in there?

A. Yes, sir. I know there was not. No, sir; there was not.

Q. When was the first island made there and how was it made?

A. Well, the only place there was there before I knew anything about it at all.

Q. Well, was there a cut off there in 1912?

A. Yes, sir; the cut off made it though—there is an island there now, and that was made back in 1912.

Q. What was that island called after the cut off, as well as before?

A. Willow Point Island.

Q. Was your place there called the Newman tow head?

A. Yes, sir; the Newman tow head—same thing.

Q. On which side of the cut off was the Newman tow head left?

A. It was left on the Mississippi shore.

Q. On the Mississippi side of the cut off?

[fol. 83] A. Yes, sir.

Q. Now, what was the character of the timber on the Newman tow head before the cut off and after the cut off?

A. Willow and cottonwood.

Q. Had you been on the Newman tow head frequently before the cut off?

A. Frequently before the cut off, but not after the cut off.

Q. Have you been there since?

A. Not on the tow head; no, sir.

Q. Did you ever hear of Newman tow head or any part of Willow Point being claimed by Mississippi?

A. No, sir; at no time in my life.

Q. But you have heard of it since this suit began?

A. Yes, sir; since the suit began.

Q. Is that the first that you ever heard of it?

A. Yes, sir.

Q. Since this suit?

A. Yes, sir.

Q. I am through with the witness.

Cross-examination.

By Mr. Cheekmore:

Q. When did you leave Willow Point plantation?

A. When did I leave it?

Q. Yes, sir; when did you leave there?

[fol. 84] A. Well, it was sometime about 1907 or 1908.

Q. Where did you go?

A. We moved to Lake Providence, Louisiana.

Q. How far away is that?

A. About twenty-five miles.

Q. When were you back at Willow Point?

A. I went every year through the winter hunting there.

Q. Were you at Willow Point at the time the cut off was made in 1912?

A. No, sir; I was not there at the time the cut off was made but I was working above there at Salem and was there right after the cut off went through.

Q. Do you know where the channel of the river went after that?

A. After the cut off?

Q. Yes, sir.

A. Yes, sir.

Q. That was practically where the river runs now, is it not?

A. Yes, sir.

Q. Now, when did the tow head first reach out from Willow Point as far as the present eastern shore of the river?

A. Well, I don't know exactly. I don't remember exactly.

Q. Well, about when?

A. Well, from the eastern shore, about that far, as far [fol. 85] as I can recollect—it was out that far, as far I can recollect.

Q. I understood you to say that up to the time that you left there you could walk over to that tow head to its eastern and northern extremity?

A. Yes, sir.

Q. The land getting higher as you go to the north of the tow head, is that right?

A. Well, I don't know that it does. Some parts of it was higher and some parts were not. It was not level.

Q. The willows grew on the low part of it, did they, of the tow head?

A. Practically all over it.

Q. All over it?

A. There were willows all over the earth part of it. Wherever there was earth on it there was willows.

Q. Was there a clearly marked and defined *lined* line where the willows grew and then the cottonwood would begin?

A. Not on the tow head; no, sir. I don't think there was. There might be some little line around some little lake or something like that. There was one or two little lakes in there.

Q. Have you been on that tow head, as you call it, since the cut off?

A. No, sir.

[fol86] Q. You don't know what is there now?

A. No, sir.

Q. Did your father ever have any open, cultivated land on this tow head?

A. No, sir.

Q. As you recollect the situation when you were a boy, the entire tow head was covered with a growth of willow?

A. Yes, sir.

Q. No cottonwood at all?

A. No, sir. Well, yes, sir; cottonwood was on it too, of course.

Q. The cottonwood and willow were interspersed?

A. Yes, sir.

Q. That was what, you say?

A. Cottonwood and willow mixed together. They did not have any set thing. Willow was at one place and cottonwood the other.

Q. Willow will grow on ground that is lower than cottonwood, will it not?

A. No, sir; I don't know. It might. I think maybe cottonwood—or willow, I mean, might grow where cottonwood will not.

Q. Do you know where the channel ran before the cut off in 1912?

A. The channel of the Mississippi river?

Q. Yes, sir.

A. Yes, sir.

[fol. 87] Q. Do you know anything about any open land of several hundred acres west of that channel and towards the north central portion of that tow head?

A. North—do you mean west—west of the Mississippi river.

Q. Of the channel as it existed prior to 1912—the cut off, it was not there, was it?

A. West. That is west of the bar; yes, sir. There is an open field—apart of it is an open field west of the bar; yes, sir.

Q. I am not talking about west of the bar now.

A. West of the Mississippi river.

Q. On the bar but west of the channel prior to the 1912 cut off?

A. Yes, sir. West there was no open land. No open field. It was not open then. There was cotton wood on it then, but that had been opened.

Q. When had it been opened?

A. In '93—in '90 and '91 it was in cultivation.

Q. Who had it in cultivation?

A. My father.

Q. Didn't you state when you began your examination that your father had never had any open field on the tow head?

A. Well, I didn't say that. You said on the main land, not the tow head. There was no cultivation on the tow head at all.

[fol. 88] Q. Now, I am talking about the land that is now lying east of the cut-off of the present channel?

A. Well, there is no land whatever under cultivation on that land.

Q. You are certain and positive of that?

A. Yes, sir; not in my time and I know that there was no place on there cultivated by our people. I know that there was nothing on there as long as I lived there.

Q. You went down there frequently?

A. Kept cattle on it every year.

Q. What I am talking about is if you had any land in cultivation down there?

A. Not on that tow head; no, sir.

Q. That is what *ai* am talking about, the tow head?

A. No, sir.

Q. Between the channel as it existed between 1897 and 1912, the present channel?

A. No, sir; no land in cultivation at all.

Q. No land was ever in cultivation there?

A. No.

Q. Do you know anything about Tullos Island?

A. No, sir.

Q. Never heard of it?

A. No, sir.

Q. Do you know anything about Island No. 98?

A. No, sir.

[fol. 89] Q. You never heard of that?

A. No, sir.

Q. About how many acres are there in that tow head?

A. I don't know. I have not the slightest idea as to how many acres there are.

Q. You have not the slightest idea?

A. No, sir; I don't know how many acres there would be in it. I can't tell.

Q. About how many miles long is it?

A. Well, I reckon it is six or seven miles long.

Q. How wide?

A. The tow head itself was two or three.

Q. Two or three?

A. Yes, sir.

Q. Do you know anything about an old plantation headquarters on that land that we have been talking about?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Q. How long has it been since you have seen this land, Mr. Newman?

A. How long has it been?

Q. Yes, sir?

[fol. 90] A. I was there in the winter of 1910.

Q. You have not been there since?

A. I have not been down on the island. I went down there on after it was cut off but I did not go over it. I was over there in 1910.

Q. Was there an island there before the 1912 cut off?

A. No, sir; no island.

Q. Was there a channel?

A. No.

Q. There was no channel at all?

A. Not before 1912. In 1912 the cut off made the channel.

Q. How did boats get through there if there was no channel there?

A. What?

Q. How did boats get through there if there were no channel there?

A. The channel was around on the river, around on the Mississippi shore.

Q. How far—just wait until I finish my question and you will be able to answer better. Was there any channel at about where the present river runs prior to 1912?

A. No, sir.

Q. There was not?

A. No, sir.

[fol. 91] Q. Wasn't there back in the nineties, the time you have been talking about, three channels there at about this point?

A. Not that I know of.

Q. How is that?

A. No channel; no, sir.

Q. Have you examined the maps in this case?

A. No, sir.

Q. You have not examined them?

A. No, sir.

Q. If any of them show more than the one channel that you have been talking about that is not in accordance with your recollection of the conditions there, then, as I understand you?

A. No, sir; there wasn't any other channel. There wasn't but one there that I know of.

Q. When that tow head was built up, willows and cottonwood, either or both, grew up all over it?

A. No, sir; not all over it. There was a part of it that not a thing was growing on it because it was sand.

Q. Well, where the soil was good the cottonwood and willows sprung up?

A. Yes, sir.

Q. Did you all ever cut any timber off of that tow head?

[fol. 92] A. No, sir.

Q. Did you see any lakes in there?

A. Some lakes; yes, sir.

Q. What formed those lakes?

A. Why, the river.

Q. The river?

A. Yes, sir.

Q. All of that was land accreted?

A. By sediment in the river.

Q. Gradually?

A. Yes, sir.

Q. Inperceptible?

A. Yes, sir.

Q. That is the way it was done?

A. Yes, sir. That described it.

Q. And that is the way those lakes were formed, by the gradual building up of the land, which formed the lakes. Is that right?

A. It gradually filled up in some places, and left islands, and in other places it did not fill up level with the Mississippi river. They never filled up level—they never filled up all the same thing in one place.

Q. Did those lakes empty into the river?

A. Some of them did. A part of them did not. Some of them did when they got to a certain heighth,—when the [fol. 93] water got high enough.

Q. What part of the tow head were those lakes in?

A. I don't know that I could say about that part of it even.

Q. Now, you have been testifying about things that existed away back yonder when you were a child of six or seven years of age, that is correct is it?

A. Well, a part of it; yes, sir, and then he asked me questions about different times.

Q. I am talking about back in 1897?

A. Well, he asked me questions about that, and he asked me questions after that.

Q. I am directing your attention now back to these conditions that you described in 1897. You were then some six or seven years old?

A. Eleven years old then.

Q. You did not pay any attention to those sort of things at that time, did you?

A. In 1897?

Q. In '93 when you undertook to describe the conditions as they then were, you were six or seven years old?

A. Yes, sir.

Q. At that time you did not pay any attention to these things, did you?

A. No, sir; I didn't pay any attention to lakes or any-[fol. 94] thing like that.

Q. You did not pay any attention to the formation of the ground there did you?

A. Yes, sir; I knew about the width then and where it was, for I went over it, and I had to know it to get back home. I was riding around by myself and I certainly had to know to get back home.

Q. When you were six or seven years old you would ride up there six or seven miles over that tow head by yourself?

A. Yes, sir.

Q. And find your way back?

A. Yes, sir.

Q. How long has it been since you were first questioned about the conditions down there in 1893?

A. How long what?

Q. When you were first questioned about the conditions in 1893?

A. It has been about around two months ago. Something like that—maybe a month ago.

Q. Some thirty-three years after you had gone over this as a boy?

A. Yes, sir.

Q. Your recollection was still clear about it, was it, Mr. Newman?

[fol. 95] A. Well, it being my old home, of course, and being back there every year until I was a man, of course it is pretty good.

Q. ——.

A. Pretty clear.

Q. When did your family sell this property?

A. My great grandfather settled it.

Q. I say, when did they sell it?

A. I don't remember what year it was.

Q. Well, about what year?

A. It must have been '7 or '8, something like that.

Q. In 1907 or 1908?

A. Yes, sir: something like that.

Q. How many acres were in that Willow Point plantation that your father owned?

A. I don't know.

Q. Well, about how many?

A. I don't know. I never did know. I don't know how many. I can't say. I never heard.

Q. You knew the extent of this tow head and its size and its border throughout all these years, and you never tried to find out or know anything about the acreage of your father's plantation?

A. I don't know the acreage. I know the width of it.

Q. All right, give us the length, and maybe we can figure [fol. 96] the acreage.

A. I never knew anything about acreage or the numbers of land, either one.

Q. I am not talking about the numbers now. I am talking about Willow Point plantation which your family owned.

A. It was about a mile from the river to the back end of the place.

Q. How much the other way?

A. Running north and south I am talking about.
Q. East and west?
A. About the same distance, I reckon.
Q. In other words, about a section of land, was it?
A. Pretty near it.
Q. About 640 acres?
A. Yes, sir.
Q. Now, when your family sold this property did you sign the deed?
A. Yes, sir.
Q. How many acres did the deed convey?
A. I don't remember.
Q. Well, did it convey anything more than this whole square?
A. Well, I don't know. I don't remember. I suppose so. Whatever we had in Willow Point plantation. That is all that I know anything about. I suppose that all attached to it went.
[fol. 97] Q. The amount of land that you conveyed then did not impress you at all?
A. No.
Q. Did you undertake to convey the Newman tow head?
A. Well, I dont know if that was in the agreement. I dont know. I dont know. I dont know nothing about it. It was not necessary for me to know nothing about that.
Q. The point is, did you undertake to convey the Newman tow head?
A. No, sir.
Q. You did not?
A. No, sir; just Willow Point place.
Q. Did the Newman family claim the Newman tow head?
A. Yes, sir.
Q. You have never conveyed it?
A. No, sir; never had it surveyed.
Q. Do you now claim it?
A. No, sir; we sold the place. We dont claim it.
Q. Sold the place?
A. Yes, sir.
Q. But you didn't sell the tow head?
A. I suppose so. I reckon so.
Q. What was that last you stated?

A. You asked me did we sell the tow head and I told you the tow head I reckon was sold with the place. I dont [fol. 98] know nothing about it.

Q. Was your father living when the place was sold by the family?

A. No, sir.

Q. Was your mother living?

A. Yes, sir.

Q. Your mother and your brother and all of the children executed the deed?

A. Yes, sir.

By Mr. Henry:

Q. When did your home there on Willow Point cave into the river—the house?

A. I believe that it was in 1904 or 1905.

Q. In 1904 or 1905?

A. Yes, sir; the home—house.

Q. Caved into the river?

A. It might have been a little later. It might have been 1905 or 1906, or 1907. I dont remember just what year it was.

Q. In 1904, 1905 or 1906?

A. Yes, sir; somewhere along there.

Q. At the time that the house caved in the river the current was against the Louisiana shore, was it?

A. At the north end of the place it was.

Q. That is the part the house was?

[fol. 99] A. Yes, sir.

Q. Where was the house located on the place, the north end?

A. The north end; yes, sir.

Q. And that caved into the river in 1904 or 1905?

Q. The northeast corner of the place where the house was at.

Q. I say, that caved in?

A. Yes, sir.

Q. And at the time that it did cave in, of course the current in the Mississippi river was over across the Louisiana bank?

A. Yes, sir.

Q. That is a fact?

A. Yes, sir.

Q. That is where it was bound to be?

A. Yes, sir.

Q. When the house caved in the river it was some 150 or 200 yards outside of the levee, was it?

A. Yes, sir.

Q. Now then, if that be true, the house, the residence caved into the river before this cut off was produced there, is that right?

A. Yes, sir.

Q. Mr. Newman, you have been on what you call the tow head recently, have you?

A. No, sir.

[fol. 100] Q. I thought you said in answer to a question of Judge Dale that you had.

A. No, sir.

Q. You have not been there recently?

A. No, sir; not on the tow head.

Q. You have not been on the tow head since the cut off?

A. No, sir.

Q. You have been discussing this matter with the gentlemen who represent the State of Louisiana, have you?

A. Yes, sir.

Q. And you have been discussing it with the other witnesses, have you?

A. Well, I don't know. In a public way, I suppose so, with the other witnesses. Yes, sir; bound to be.

Q. Yes, sir; with the other witnesses?

A. Yes, sir.

Q. Now you have not then depended, in giving your testimony, you have not depended entirely on your recollection for those things that happened away back yonder?

A. Well, no; not altogether. I have depended on my recollection, of course, but it is going way back there, and my recollection has been improved from being there, and everything. My testimony has been from my own memory, though.

Q. But, I say, your recollection has been improved after [fol. 101] discussing this matter with other people?

A. Well, no, sir; I remember everything. It is very distinct.

Q. Then the testimony that you have given of the conditions there was at the time that you had formed your first recollections in 1893?

A. It was along at the time. I don't know exactly the time. It was along something in that time that I can remember.

Q. Did you fix it in 1893?

A. No, sir. I think that things first came to my attention there in 1891, as I remember the overflow and the levee breaking around the house, and I know that in 1893 I started hunting. That is the reason that I remember that. My father gave me a shot gun at that time and started me hunting.

Q. Do you remember exactly away back yonder when you started hunting? You were nothing but a little small boy. Do you remember absolutely about the time?

A. Well, about. I say that I remember the year. I don't remember all of the things, but I remember the year that I started hunting in.

Q. You remember about the levee breaking and the overflow? That was when you were small? That was an epoch in your life?

A. Yes, sir.

[fol. 102] Q. Now, you left the Point in 1907?

A. I think it was somewhere along there.

Q. That is what you said?

A. Yes, sir.

Q. Of course, if you have got it wrong you can change it, Mr. Newman?

A. Sometime in that time.

Q. This property was sold to Mr. Hamley that same year?

A. I don't remember whether it was or not. I was camped there, and I don't remember. I stayed a year or two after my mother left.

Q. You lived there in 1907?

A. Yes, sir.

Q. And the record shows, as I recall it, from the testimony of your brother, that the property was sold in 1907. That is right, is it?

A. I think it is, as near as I can remember.

Q. Now, I believe you told us that when you moved away you went to Salem?

A. No, sir; my mother and my brother went to Lake Providence.

Q. And you followed them?

A. Yes, sir.

Q. Did you go into business there?

A. I worked as deputy sheriff.

Q. Lake Providence is the county seat of that parish, as [fol. 103] I understand it?

A. Yes, sir.

Q. And that parish is East Carroll?

A. East Carroll; yes, sir.

Q. I believe you stated that if you returned to Willow Point that it was merely to hunt?

A. Yes, sir; after that I always went down there to hunt.

Q. I see.

A. Yes, sir; merely to go hunting.

Q. That was in the winter when the geese ans ducks were flying?

A. Yes, sir.

Q. That is all.

Redirect examination.

By Mr. Dale:

Q. You say that your residence caved in sometime between 1904 and 1907?

A. Sometime about that time.

By Mr. Henry: In 1906 he said.

By Mr. Dale: He said that it was 1907 and the record here will show it. He said between 1904, 1905, 1906 and 1907. If I am not correct the record will show it.

Q. I will ask you if you recollect the exact date that it [fol. 104] caved in?

A. No, sir; not the exact date.

Q. I will ask you to approximate it as near as you can. State the exact date that it was?

A. I don't really know what the exact date of it was.

Q. Do you know whether or not it was between 1904 and 1907?

A. Yes, sir; by other things that happened I know that it was within that time, but I don't remember just the year that it caved in.

Q. Did all of Willow Point cave away?

A. No, sir; I don't think it did.

Q. Do you know whether it did or not?

A. I don't know whether it is all caved yet or not. I don't know.

Q. When was the last time that you were at Willow Point, Mr. Newman?

A. I was there last winter, out on the bar, but I never went back to the main land.

Q. Was it caving then?

A. I never went back to the main land.

Q. I am not talking about the main land. You were on the bar?

A. Yes, sir.

Q. On the bar last winter?

A. Yes, sir.

[fol. 105] Q. Well, were you there previous to last year—when were you there previous to last year?

A. I was there in 1923.

Q. Was it caving then?

A. No, sir.

Q. When were you there previous to 1923?

A. Well, I was out there then some two or three years before. Let me see. It was in 1920 that we went down there to camp in 1918 or 1920. Just about that time there was a good bunch of us went down there and camped.

Q. Do you know whether or not, as a fact, all of Willow Point bar caved in?

A. No, sir; all of it has not caved in.

Q. Did it ever cave in?

A. No, sir; it never caved in.

Q. Do you know, as a fact, whether or not it increased in size?

A. It increased in size.

Q. In an easterly direction up until 1912?

A. Yes, sir; I know that it increased until that time.

Q. From the time that you recollect it until the fall of 1912 it had not caved in?

A. Yes, sir; that is right.

Q. And it has continued to increase in size year by year?
A. Yes, sir.
[fol 106] Q. And when it caved in it was just in the northern part?
A. Northeastern.
Q. The northeastern part?
A. Yes, sir.
Q. The river was running in what direction along at the northeastern part?
A. Well, it run—it came across to Willow Point place running east and west, pretty near it, and then it run—it went out towards the Mississippi shore and then south again.
Q. That part where the river ran east and west made the norrhern part of Willow Point bar come to the river?
A. Yes, sir.
Q. And that was the part of Willow Point that caved?
A. Yes, sir.
Q. But not the other part?
A. Not the eastern part.
Q. The other part, while the northern part was caving the other part was increasing in size?
A. Yes, sir.

By Mr. Creekmore: I have been thinking, if you will allow me, that I would interpose an objection to some of Judge Dale's questions. Some of them are leading.
[fol. 107] By Mr. Dale: I will withdraw the question and put it in another form. I will put it in different shape and another way so as to avoid your objection.

Q. The time that part of the place was caving another part was making?
A. Yes, sir.
Q. Now, what part was caving and what part was making, Mr. Newman?
A. The north part was caving and the eastern part was making.
Q. Did you ever know of the eastern part caving prior to 1912?
A. No, sir.
Q. Do you know whether it continuously made or not?
A. Yes, sir; it continuously made.

Q. From the point where you say was the main land in an easterly direction towards the Mississippi river,—not northerly,—how far, at the time did the willows and bar and all extend?

A. About five miles.

By Mr. Henry: We object to that as repetition. All that has been gone over with this wtiness.

By Mr. Dale:

[fol. 108] Q. How far from the main land, in an easterly direction, when you first recollect, had that Willow Point bar extended, approximately?

A. The willow part?

Q. Yes, sir.

A. Do you mean the earliest part of my recollection?

Q. Yes, sir.

A. Or the latter part of my recollection?

Q. I mean your earliest?

A. About a mile or a mile and a half from my earliest recollection.

Q. About a mile or a mile and a half?

A. Yes, sir.

Q. Was it ever less than that?

A. Not to my recollection; no, sir. I don't know.

Q. What changes have taken place, if any?

A. It gradually got larger.

Q. That is all.

(Witness excused.)

[fol. 109] T. B. Beard, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Dale:

Q. You are Mr. T. B. Beard?

A. Yes, sir.

Q. How old are you, Mr. Beard?

A. I am fifty-nine years old.

Q. In what year were you born?
A. October, 1866.
Q. Where were you born?
A. In East Carroll parish, Louisiana.
Q. Examine this map which has been marked Exhibit C, Sheet 17 of the Mississippi River Commission, and see if you can find or locate Willow Point plantation?
A. Yes, sir.
Q. Is that East Carroll parish?
A. Yes, sir.
Q. How far is that place from where you were born?
A. About four or five miles, I guess.
Q. That is four or five miles north of Willow Point?
A. Yes, sir.
Q. About when you first recollect becoming acquainted [fol. 110] with that—you are acquainted with that place, are you?
A. Oh yes; verywell.
Q. About when did you first become acquainted with that place?
A. Well, about fifty years ago, I guess.
Q. Did you know Mr. Walter A. Newman?
A. Yes, sir.
Q. Did you marry any connection of his?
A. He married a sister of mine.
Q. Did you know Mr. Ernest Newman?
A. Yes, sir.
Q. And you knew Mr. George Newman?
A. Yes, sir.
Q. Witnesses in this case?
A. Yes sir.
Q. What relation are they to you?
A. My nephews.
Q. Did you or not visit your sister at that place often?
A. Quite often; yes, sir.
Q. What did you do when you would go down there?
A. Well, sometimes I would stay at the house, and frequently I would take a hunt—go around the bar with the [fol. 111] boys, and before they were large enough I would go with my brother-in-law.
Q. Do you know where the Willow Point Bar formation began and where the old main bank was?
A. Yes, sir; I think I do.

Q. About how far was that from what was the Newman residence?

A. Well, I don't know so much about distances. It was about 100 yards or 150 yards, or something like that. out in front of the house, right east of the house.

Q. Do you know which was the old bank there and which was the formation of Willow Point bar?

A. Well, the sand bar started right where it joined to the main bank.

Q. What was the difference in the character of the timber?

A. Well, there was not anything at all except in front of the house on the old soil.

Q. Any timber on the main bank?

A. Yes, sir.

Q. What was the character of that timber?

A. Well, it was cotton wood.

Q. And what else?

A. I don't remember.

[fol. 112] Q. Any oak, gum or hackberry?

A. No, sir; not in front of the house.

Q. I am not talking about in front of the house—back of the house on the main land?

A. Yes, sir; on the main land there was.

Q. What was the character of the timber 150 yards back of the house on the main land?

A. Well, I think there was——

Q. (Interposing.) Any sycamore?

A. Yes, sir; a few sycamore, gum, and I don't remember.

Q. Any elm?

A. Yes, sir; elm.

Q. What was the character of the timber on the bar?

A. Well, that was all cottonwood and willows.

Q. Now, at the time that you can recollect farthest back, how for out had that bar extended from the mainland? How far east?

A. I suppose about a mile and a half or two miles,—something like that. I dont know. It was quite a distance out.

Q. Did it extend out any farther afterwards?

A. Yes, sir; it continued to grow each year.

Q. How far did it extend from the main land at its farthest out up until 1912—how far out from the main land, if you can tell?

[fol. 113] A. Well, I suppose it must have been three or four miles. I don't know. Of course, I didn't measure it. I dont know exactly, but it was three or four miles. It might have been further than that.

Q. Was there any cut off of the river in there at that time?

A. At what time?

Q. Was there a cut off in the river at that time at that place?

A. Not at that time.

Q. At any time?

A. About 1912 I think there was a cut off there.

Q. Do you know anything about what is called the Newman tow head?

A. Yes, sir.

Q. What was the Newman tow head?

A. Well, you see the land began to rise. The main bar was already there, and this tow head began to grow, you know, decided to grow, and I dont know how much a year, but each year it got higher and higher, and finally it got large enough for large willows and cottonwood to grow on it.

Q. Was or not the bar you speak of on which this tow head arose attached to the main shore on the Louisiana side?

[fol. 114] A. Yes, sir; it was.

Q. Do you know of it being severed prior to 1912?

A. Not to my knowledge.

Q. Would you know whether it was or was not?

A. Certainly I would know; yes, sir.

Q. What character of timber was on the Newman tow head?

A. Willow and cottonwood principally. There might have been a few little sprouts of other stuff growing, but no timber to amount to anything. There was no timber, in other words, except willow and cottonwood.

Q. What was the size of the willow and cottonwood on the Newman tow head when you can first recollect?

A. It was quite small. Little bit of stuff.

Q. Approximately how tall?

A. Three or four feet high,—four or five. It grows very rapidly, you know when it comes out.

Q. Did or not your brother-in-law cultivate any part of Willow Point?

A. Oh yes, sir; he cultivated Willow Point.

Q. Did he or not cultivate a part of Newman's tow head?

A. No, sir; I dont think he did. Not that I know of.

Q. Do you know on which side of Newman's tow head and Willow Point bar the main channel of the river was prior to 1912 and at all times prior to 1912?

[fol. 115] A. It was on the east side; on the Mississippi side.

Q. Do you know whether there was an island between the extreme eastern part of that tow head and the Mississippi river, in the Mississippi channel of the river?

A. I dont know anything about an island.

Q. Do you know whether there was any there or not?

A. What?

Q. Do you know whether there was any in there or not?

A. There were not that I know of.

Q. If there had been an island there would you have known it?

A. I suppose I would. I would have been bound to have seen it.

Q. Did you ever see any there?

A. I never did.

Q. After the cut off which side of the cut off did the Newman tow head remain?

A. On the east side.

Q. Towards Mississippi?

A. Yes, sir.

Q. Do you remember whether there was any caving at any time on any part of Willow Point plantation?

A. There was caving on the northern part of the place.

[fol. 116] Q. Did it cave any on the eastern part?

A. No, sir; it did not.

Q. While it was caving on the northern part what was it doing on the eastern part?

A. As I remember it, it was extending out further east.

Q. In what direction did the Mississippi river run on the northern part of Willow Point?

A. On what direction?

Q. Yes, sir?

A. It run south—it run east and west like. On the northern portion of the place, you mean?

Q. Yes, sir?

A. It run east and west—it run east.

Q. The current was flowing east?

A. Yes, sir.

Q. Had you ever heard of any part of this land being claimed by Mississippi?

A. No, sir; I had not.

Q. Before you were a witness in this case?

A. No, sir; I had not.

Q. Now, I will ask you one other question. Who was regarded as the owner of Willow Point plantation and Newman tow head prior to the cut off?

A. The Newman heirs.

[fol. 117] Q. Who are the Newman heirs?

A. George Newman, Ernest Newman, my sister and her family.

Q. That is all. The witness is yours.

Cross-examination.

By Mr. Henry:

Q. Mr. Beard, Judge Dale asked you if anybody ever claimed Willow Point other than your sister and the other Newman heirs prior to the cut off, and you said that you never heard of any one?

A. Yes, sir.

Q. Mr. Beard, the cut off, you say, occurred in 1912.

A. I think something like that. I think it was in 1911, or 1912, somewhere along there?

Q. Now then, if this record here is, as testified to by the two Newman boys,—if that shows that Willow Point was disposed of by their mother, your sister and the two Newman boys, the Newman heirs, in 1907, then there was somebody who claimed the property prior to the cut off, wasn't there?

A. Well, I dare say, but I don't know anything about that, Mr. Henry.

Q. That shows how little you know about it?

A. It shows how little I know about the sale of it.

[fol. 118] Q. Well, that is a part of the evidence that is in here, and when Judge Dale asked you that question it shows how little you know about it?

By Mr. Dale: My question to him was if he ever recollected of anybody in Mississippi claiming it.

By Mr. Henry: You did ask him if he ever heard of anybody claiming it in Mississippi. You did ask him that question, and then you also asked him, if I understood you right, if he ever heard of any other one claiming it.

By the Witness:

A. The way I understood his question I thought that he was asking me if I knew of any one in Mississippi claiming the property.

By Mr. Henry:

Q. Yes, sir; and you answered that no. But any how, I will proceed with my cross-examination and ask you another question. That is all right. We will not argue about that, because the record speaks for itself, and it will show. I will ask you, Mr. Beard, being so familiar with all of the Willow Point property, you are also familiar with the number of acres which your brother in law owned which was known as Willow Point?

A. No, sir; I was not.

[fol. 119] Q. How could you be familiar with all of these things without knowing that?

A. Because I could see, that is all.

Q. Well now then, you knew of the northern point, you have stated, of Willow Point—you knew of the northern point, of the holdings of your brother in law on Willow Point? You knew that? You said that, didn't you, and you knew the northern boundary line then of the plantation?

A. Sure I did.

Q. And you knew the eastern boundary line?

A. Yes, sir.

Q. Now, you knew the northern and eastern part. Why didn't you know the southern part?

A. I knew where the southern line was, of course.

Q. How did you get that?

A. By seeing it—being shown to me. That is all.

Q. Why did he show it to you?

A. Why did he show it to me?

Q. Yes?

A. I would just be riding around along with my brother in law, and he would show me the line. That is all. Just riding around with him.

Q. Where did the southern line of Willow Point plantation of your brother in law's property divide and separate?

[fol. 120] A. I think it was the Bell plantation belonging to Mr. Foster.

Q. Mr. who?

A. Mr. George Foster.

Q. You think it was the Bell plantation?

A. Yes, sir.

Q. You don't know the number of acres, do you?

A. No, sir.

Q. You have no idea?

A. I have no idea.

Q. About how long a stretch was it along the river?

A. I don't know. I didn't measure it.

Q. I know, but you have some idea, have you not?

A. I can't say. I might say one thing and I might say another. I am just as apt to be wrong one way as I am another.

Q. Then you just don't know?

A. No, sir; I don't know.

Q. How far did it extend back west?

A. Well, for several miles. A mile or more. I don't remember how much. I will not say.

Q. It was several miles, a mile or so, now which one of those statements as to distance shall I accept?

A. Either one you wish. I will not say how much. I never measured it to find out, and I don't know, and he never told it to me.

[fol. 121] Q. Now then, Willow Point plantation, owned by your brother in law, the line on the north side run east and west did it?

A. Well, as near as I knew. It was bounded by the Mississippi river.

Q. I say, according to your statement it run east and west?

A. Yes, sir.

Q. It commenced caving on the northeast corner, you say?

A. Well, it caved on the north side of the plantation.

Q. How could it cave off the north side, on the north line running east and west, and the east line facing the Mississippi river?

A. How could it cave off the north side?

Q. If the north side did not touch the river?

A. I said that it was bounded by the river on the north side.

Q. It was bounded by the river on the north, was it?

A. By the north side.

Q. The east side did not touch the river?

A. The east side certainly touched the river.

Q. How could it be bounded on the north by the river if the east side touched it?

A. The river run on the east side and also run on the [fol. 122] north side—on the north side and then around on the east. There was a bar made out there in front where it was bound to get around it.

Q. As I have it, the entire north side was bounded by the Mississippi river, and the river then run around this point and bounded it on the east side, is that it, Mr. Beard?

A. Yes, sir.

Q. Now then, if it commenced caving on the north side it caved off that part of it that was on the north, and you say that it also caved off on the northeast?

A. I don't remember that I ever said that.

Q. Then if you did not say it I am mistaken. Am I mistaken in my understanding of what you said about that?

A. I don't remember of having said it.

Q. Did you tell Judge Dale that it began caving on the northeast corner?

A. I said on the north side of the place.

Q. It did not cave on the northeast corner?

A. I did not say anything about that.

Q. Well, did it?

A. Well, I did not examine that corner of it to see. I did not know there was a corner.

Q. If it was bounded on the north by the Mississippi river, then there was bound to be an east side to it, was [fol. 123] there not?

A. Sure.

Q. All right. Now then, did it commence caving and continue caving on the north side of it, the northeast corner or on the east side?

A. On the north side.

Q. Now, we have it. You don't know anything about the northeast part of it?

A. Except there was a bar on the northeast.

Q. How could it cave on the north side and there be a bar on the northeast corner?

A. Very easy.

Q. It could?

A. Yes, sir.

Q. That's your answer?

A. Yes, sir; I did not know that there was a corner on it at all, a northeast corner. There may have been a northeast corner somewhere, but all over the place there was a sand bar.

Q. When was that caving you refer to?

A. It was caving more or less after that bar was on the north side—a gradual cave.

Q. In other words, it was caving on the north side of the Newman property ever since you can remember?

A. Yes, sir.

[fol. 124] Q. A gradual caving?

A. Yes, sir.

Q. Because the current of the river was directly against that bank?

A. I don't know anything about it being directly against it.

Q. But it was against it?

A. Yes, sir.

Q. And that caving continued, you say, up to what year?

A. Well, as long as I remember the place it was caving on the north side.

Q. And you have been remembering the place for fifty years?

A. Yes, sir.

Q. Where do you live now, Mr. Beard?

A. Well, I am a timber cruiser and I live about at different places, but my home is at Sondheimer.

Q. Where is that?

A. On the M. H. & H. St. L. Railroad in East Carroll Parish.

Q. That is down from Lake Providence, or up above?

A. It is below Lake Providence.

Q. Over towards Tullulah?

A. Yes, sir.

Q. Now, you were born, you say, fifty-nine years ago, and [fol. 125] you have known that place for fifty years. That shows that you knew the place back in about 1876, does it not?

A. I have not figured it exactly, but I will accept your statement.

Q. That is the subtraction?

A. Yes, sir; that is all right.

Q. That would make it in 1876, and it has been caving since that time?

A. Yes, sir.

Q. Now, you have known that place since 1876, and I understood you to tell Judge Dale, and if I am wrong you may correct me, that there was no island in the Mississippi river between Willow Point, or along in there, that you know of? No islands there?

A. I did not see them. I did not see them.

Q. You have never known them to have been in the Mississippi river since 1876?

A. I did not see them.

Q. If they were there you just did not know it and you did not see them?

A. No; I did not see them.

Q. If they had been there you would have seen them, would you?

A. I suppose I would.

[fol. 126] Q. Your eye sight is good yet, is it?

A. Yes, sir; it is very good. I never have to use glasses.

Q. And a timber cruiser has to have good eye sight?

A. Pretty good; yes, sir.

(Witness excused.)

Capt. W. H. Reed, called as a witness on behalf of the complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Brandon:

Q. State your name and age?
A. W. H. Reed; fifty-four last March.
Q. Where were you born?
A. At Natchez, Mississippi.
Q. In what part of the city were you born?
A. In the northern part, near the Mississippi river.
Q. What was your father's occupation?
A. He was a river man, and rafted. After cottonwood timber because merchantable he was in the lumber business, and would take the cottonwood to New Orleans.
[fol. 127] Q. From the time that you have been able to work at all what has been your occupation?
A. River man, timber man and steamboatman.
Q. Do you hold any official position at the present time?
A. I do.
Q. What is your present position?
A. Sheriff of Adams county, Mississippi. Sheriff and Tax Collector.
Q. You say from the time that you became old enough to work you began rafting timber, and so on?
A. Yes, sir.
Q. State whether or not you are a licensed pilot?
A. I am.
Q. Licensed to pilot where?
A. On the Mississippi river from New Orleans to Greenville, and later on in the tributaries of the Mississippi river.
Q. Do you hold a master's license also?
A. Yes, sir; master and pilot.
Q. How long have you held a pilot's license?
A. Since about 1907 or 1908.
Q. Do you still hold such license?
A. Yes, sir.
[fol. 128] Q. How long have you held a master's license on the Mississippi river?
A. How's that?
Q. How long have you held a master's license?

A. For the same period.

Q. Do you still hold that license?

A. Yes, sir.

Q. On Sheet No. 17 of the Mississippi River Commission map, which is marked Exhibit C to the Complainant's bill of complaint, I direct your attention to a point on said map that is marked "Willow Point, Pecan Grove and Henderson's landing." I want to ask you whether or not you are familiar with the conditions of the shores of the river in the sections indicated by me there?

A. Yes, sir; I am quite familiar with that territory along the Mississippi river there.

Q. How far back does your acquaintance with that stretch of the river date?

A. Back to about 1894.

Q. How did you happen to become acquainted with that stretch of the river in 1894?

A. In 1894 and in the early spring or the latter part of the winter I went with my father and a cousin and we camped on the Henderson property.

Q. What were you doing there?

[fol. 129] A. Gathering drift timber,—drift logs that would flow down the river.

Q. Your father was?

A. Yes, sir; and a cousin of mine. Another Reed. He has passed away now.

Q. Is that your earliest personal knowledge of that portion of the map to which I have called your attention?

A. Yes, sir; that was my first trip that high up. We came to Vicksburg and rowed up there in a skiff.

Q. About what was your age then?

A. In 1894 I was about twenty-four.

Q. Twenty-two—you would be twenty-two?

A. Yes, sir; twenty-two.

Q. Where did you camp?

A. On the Henderson property, just below there.

Q. Just below what point?

A. Just below Henderson's Landing at that time.

Q. Henderson's landing was located where?

A. On the Mississippi River, East Carroll parish.

Q. How long were you camped there?

A. About six weeks at that time—a month or six weeks.

Q. What was you, your father and your cousin doing?

A. Gathering drift timber for a wood yard for the New Orleans market.

Q. State what was the condition of the shore line at that time on the Louisiana side of the river—how long was it [fol. 130] indicated on the map as Willow Point?

A. What is the question?

Q. State what was the character of the shore line along that portion of the river on the Louisiana side?

A. On the Louisiana side?

Q. Yes; opposite what is indicated as Willow Point?

A. Well, at that time when we first went there there was a white sand bar, possibly a mile wide.

Q. It was possibly a mile wide. You mean that it extended out from the shore or up and down the shore?

A. I mean out from the timber line on the shore to the point of the bar.

Q. I understand you to say that in 1894, in front of Willow Point, there was a bare sand bar extending out about a mile from the Louisiana shore?

A. Yes, sir; when we first went there to camp.

Q. Towards what shore did it extend?

A. Towards the Mississippi shore.

Q. In which direction?

A. Northeasterly direction.

Q. When you visited this place in 1894 what was on this bar, this sand bar? I am not referring to the main land, but to the sand bar. Was there any growth of timber of any kind?

A. I don't remember of anything on the bar when we went there except drift timber, outside of the regular timber line.

[fol. 131] Q. When you speak of the regular timber line, what do you mean?

A. I mean the line of timber that went from the Point—from the Point down around the Point just above Henderson's landing at that time there was no timber there at all. Today there is plenty there.

Q. That was along the main shore?

A. Yes, sir; that was along the main shore behind the white sand bar. It then was a white sand bar covered by the river when it backed up against the timber.

Q. The white sand bar was covered—covered with what?

A. Water.

Q. Now, where abouts were you gathering drifting timber on this occasion?

A. Going over the white bar, as the river covered the bar with water, the timber drifted,—wood, logs and so forth with the last fall of the river that came after the rise in the river in 1894.

Q. And as the river rose——

A. (Interposing.) The bar covered.

Q. The bar covered?

A. The drift passed on over, and we would pick out the best stuff and raft it to wood yards and saw mill use.

Q. Did you have occasion to go up to this point at any subsequent time, to this first occasion in 1894?

[fol. 132] A. How's that?

Q. Did you have occasion to go up and down the river in front of this Willow Point subsequent to 1894?

A. Yes, sir.

Q. Did you go there the next year?

By Mr. Henry: We object to that.

By Mr. Brandon:

Q. Go ahead. Answer the question. The objection has been noted, and you may answer the question.

A. I passed up and down the river year after year.

Q. Year after year?

A. Yes, sir.

Q. You have stated, if I understand you corectly, that there was timber along the original main shore line in 1894?

A. Yes, sir.

Q. That same bar extended out, and was bare of timber?

A. Yes, sir.

Q. State whether or not at any time, or subsequent to that, any timber growth appeared?

A. Yes, sir; there was what appeared on the island and

grew on the white sand bar. I did not mean that what appeared was an island: I mean that a tow head appeared on the white sand bar.

Q. Now, was that tow head that you have just referred to in your answer, was it close to or far from the Louisiana shore?

[fol. 133] A. Close to the Louisiana shore.

Q. What was the character of this growth that you say appeared, as I understood you—when you say the main shore line—you mean the main shore line—which main shore line?

A. From Willow Point down to Henderson's landing there was a timber line, and from Willow Point landing down just above Henderson's landing.

Q. That was the main shore?

A. Yes, sir; on the timbered part of the Newman property.

Q. Now, I have reference to the sand bar. You have stated after you first visited there in 1894 that a timber growth appeared on the sand bar?

A. Yes, sir.

Q. And next to which shore? Next to the main land shore was it?

A. It was near the Newman Tow Head on the bar.

Q. What was the character of this timber growth that first appeared?

A. How's that?

Q. What was the kind of trees, those that first appeared?

A. Cottonwood and willow.

Q. Well, did they continue to grow?

A. Yes, sir.

[fol. 134] Q. What was the result of this growth there?

A. Well, it growed on up until it became merchantable,—a part of it, any way.

Q. Where the timber sprung up did the sand bar grow higher or lower? What was the effect of it?

A. The tow head continued to grow in height and size.

Q. It formed a tow head there, did it?

A. Yes, sir.

Q. Now, you stated in response to questions that when you first knew it that this sand bar extended out easterly from the Louisiana shore about a distance of what?

A. A mile.

Q. About a distance of a mile?

A. Yes, sir.

Q. During this time was any change taking place on the northerly—I do not say north, but northerly—side of this Willow Point?

A. What is the question?

Q. Was there anything on the shore line taking place on the northerly side of Willow Point, on the northerly side of the Willow Point property?

A. The extreme northerly side of Willow Point property continued to cave.

[fol. 135] Q. As the caving took place on the northerly side did any change take place on the easterly side of Willow Point?

A. Yes, sir.

Q. What?

A. Willow Point bar continued to grow eastward.

Q. From which shore?

A. From the Louisiana shore.

Q. And towards which shore?

A. Towards Mississippi.

Q. As this bar in which direction did the current of the river turn, which you say had been caving off the extreme northerly part of Willow Point? Which way did the river run from there?

A. Leaving Willow Point Landing, the main channel at that time——

Q. (Interposing.) What year are you talking of now?

A. I went there in 1894 to start with.

By Mr. Henry:

Q. In what year are you talking about with reference to the caving off of the northerly part of Willow Point?

A. Well, I will say from 1900 on I became very well acquainted with the condition of the caving.

Q. You say from 1900?

A. Yes, sir; for at that time it became very prominent.

By Mr. Brandon: I suggest, Judge Henry, that you re-

[fol. 136] serve all that for your cross-examination.

By Mr. Henry: All right then. I was just getting ready to put in an objection inasmuch as you had not designated the year.

By Mr. Brandon: I will bring that out for you then. I thought all understood it.

Q. Now, you have stated that from 1894 the Point continued to extend rapidly eastwardly?

A. Yes, sir.

By Mr. Henry: Let our objection be noted to that.

By Mr. Brandon:

Q. Now state whether or not from 1894 on you had occasion to go up and down the river around this point, and if so, for what years?

A. Well, after I got a license I was on the steamboat then as deck hand, cook and so forth, on that boat, a small tow boat. That was along about 1900, and I became acquainted with the channel along there as a steamboatman.

By Mr. Henry:

Q. In 1900?

A. Yes, sir.

[fol. 137] By Mr. Brandon:

Q. Now, about 1900, how far out from the Louisiana shore towards the Mississippi shore had this accretion of sand bar extended?

A. From my first knowing timber line there it extended back—it had increased about two miles. The bar had gone back a mile from 1894 to 1900.

Q. Extended about two miles?

A. Yes, sir.

Q. State whether or not, if you know, if that bar in subsequent years, continued to grow or whether it became less?

A. It continued to grow.

Q. In what direction?

A. East and northeasterly.

Q. From which shore towards which shore?

A. Northeasterly in 1912.

Q. Were you familiar with the conditions say in 1910 and 1911?

A. Yes, sir.

Q. Did you have occasion to go up the shute in the river?

A. I was towing timber up there.

[fol. 138] Q. Towing timber?

By Mr. Henry: We object to that. You asked him about a chute, and I never heard him say anything about a chute.

By the Master: Very well. Let the objection be noted, and also let the record show that the ruling is reserved.

By Mr. Brandon:

Q. You said towing timber?

A. In 1911, 1912 and 1913 I was towing timber past the Willow Point property or the Newman property.

Q. How far out at that time from the old Louisiana—the main Louisiana old wooded shore had this sand bar and accretions extended in 1911?

A. I think about three and a half miles from the old timber line that was first made in 1894.

Q. Had it extended any further in 1912?

A. Yes, sir.

Q. Now, you have testified that shortly after your first visit to this section of the river in 1894 there was a growth of cottonwood and willow timber that sprung up on the sand bar, near the Louisiana old shore line?

By Mr. Henry: That is not my recollection of his statement in regard to it. He stated that in 1894 was the first [fol. 139] time that he became familiar with the property, or that he was ever up there.

By Mr. Brandon: Yes, sir; but he stated that in the next year or so he was up there again.

Q. How soon after 1894 did you notice what you have testified to and referred to as the tow head and on which cottonwood and willows started near the Louisiana main line?

A. I can't remember the exact year that the tow head started to form, but it became prominent about 1900, so that steamboatmen would know how to direct other pilots, and give them directions as to their course which should be run, and that part of it, Newman's Tow Head, or the tow head there could be taken as a land mark.

Q. As this sand bar extended eastwardly as you have stated, please tell the court whether or not there was any other tow head that sprung up, and if so, where?

A. The Newman tow head was the last one that I know of to spring up and grow on that bar. There was a tow head inside of the timber line.

Q. On what part of the bar was this second tow head that you have referred to as the Newman Tow head located?

A. On the outer part off from the timber line on the Willow Point property, I would say, 150 yards from the old [fol. 140] timber line to the new timber line on the white bar.

Q. Was this second tow head of large or small extent?

A. Well, it had grown until 1912 when it was quite a tow head. As to the number of acres in it, there was quite a few—quite a few—quite a number of acres in it.

Q. Did you have occasion at any time to land on the bar?

A. Yes, sir; at the foot of it.

Q. When?

A. Along in 1900, and from 1900 we would land there with timber and cut some willows off of it for what we call binders—binders we call them, which are used for splices in splicing the logs together, fastening the logs together—fasten a string of logs together.

Q. On which shore of the river was this?

A. It was on the Louisiana shore of the Mississippi river, there at the foot of the island where we would get the slack water.

Q. How far was that from the Newman tow head?

A. On the foot of the tow head.

Q. I will ask you again what was the character of the timber on this accretage, this accretion to the main land on the Louisiana shore, to which you have referred? What was the character of the timber growth?

A. Do you mean on the tow head?

[fol. 141] Q. Yes, sir?

A. Cottonwood and willow.

Q. When you first noticed it what was the size of this timber?

A. When it first became much prominent and I was taking much note of the island, the timber was big enough for splicing poles,—five or six inches, or seven or eight inches. I judge that it was four or five inches all the way through.

By Mr. Henry:

Q. That was willow?

A. Yes, sir; we used that altogether in those days for our splices.

By Mr. Brandon:

Q. Well, what about the cotton wood?

A. The cotton wood was possibly seven or eight inches in diameter.

Q. In what year was that?

A. About 1900.

Q. Do you remember any event that occurred that affected the physical condition of this point about the year of 1912, Captain Reed?

A. I do.

Q. What took place in 1912?

A. The Mississippi river commenced to wash out the depression between this tow head and the main timber line on the Newman property, and it washed it out for [fol. 142] quite an extent that year and made the cut off virtually, but it did not clean it right out until 1913. We steamboatmen continued to use the old channel unless we had very light boats, and we continued to go around the old way in 1913—the remainder of 1912 and in 1913, when it was cut off and it moved the other way and then we used the new channel to run our boats—used the new channel.

Q. That was in the year 1913?

A. Yes, sir; in 1913.

Q. Prior to this cut off of 1913, or 1912,—I beg your pardon, that you have testified to, where did the main channel of the river run with reference to the Newman Tow head?

A. It ran around the easterly side of it between Mississippi and Louisiana. That was Albemarle Bend, and between the Louisiana shore and the Mississippi shore.

Q. What would be the Louisiana shore?

A. The Newman property. The Newman tow head, sand bar and so forth.

Q. Now, on which side of this main channel of the river, what you call Albemarle Ben, was the Newman tow head? On the east or west side?

A. Westerly side according to what is known by steamboatmen—the right hand side of the river.

Q. When you speak of the right hand side of the river, [fol. 143] you speak of the right hand side of the river going down? Going down stream?

A. With the flow of the current; yes, sir.

Q. Prior to this cut off of 1912 nearer to which shore was the thalweg or the main current of the channel of the river in Albemarle Bend?

A. Down the Louisiana shore as far as the lower side of the tow head. The channel was right up against the island and it left there and went over and would strike the Mississippi shore just below Ingomar, above Scruggs' landing, and would sweep down the bend of the main shore, and from there to Chotard. There was a little set off from there, and the channel was then out about one third of the way to the middle of the river on down to Brunswick, and from there back over to Henderson's.

Q. When you say "island" what do you mean?

A. I mean tow head.

Q. Was it an island in 1911?

A. No, sir; it was an island in 1912—a complete island.

Q. Is that the island shown on the map known as Newman's tow head, is that correct?

A. Yes, sir.

Q. Was there an island there before the cut off?

[fol, 144] A. No, sir; it was a tow head on Newman's bar, or Willow Point Bar.

Q. I will ask you this question. Prior to the cut off which you have testified took place in 1912, I will ask you again how far had this accretion of which you have testified, and on which the Newman tow head was located, how far did it extend out from the old original Louisiana shore line to the easterly end of the Point?

A. From what I have told you was the timber line, about three and a half miles.

Q. Did the point extend beyond the timber line of the Newman tow head?

A. Oh yes, sir.

Q. How much beyond the timber line of the tow head did the sand bar still extend prior to the cut off?

A. Up to 1912?

Q. Yes, sir?

A. I guess there was two miles of the white sand bar outside of the white tow head at that time. There was about 500 acres of the tow head. That would be my rough guess at it.

Q. Then, from the water's edge of the tow head, you say it was about two miles from the timber of the tow head, and from the main shore it was about three and a half miles?

A. Well, say from the outer side of the timber on the [fol. 145] tow head in low water it was about two miles. It was about two miles of white bar. That was in extremely low water when all the sand bar was out.

Q. And from the timber line back to the Louisiana shore I understood you to say that it was about three and a half miles?

A. I will say from the timberline back to the back of Newman's property was a mile and a half, making five miles in all.

Q. Five miles in all?

A. Yes, sir.

Q. Now, before this cut off state whether or not there was any channel in the ordinary stages of the water in the Mississippi river anywhere between across this point between the extreme eastern end thereof and the Louisiana shore?

A. Between the tow head and the old timber line there was a depression of white sand, and I think in extremely high water some very small boats navigated that island or depression.

Q. What do you call a depression?

A. Low place.

Q. Was it connected with the main land?

A. Was what connected with the main line?

[fol. 146] Q. I will withdraw that question and ask another one. State whether or not Prior to the cut off of 1912 in the ordinary stages of the Mississippi river, there was or not in the ordinary stages of the Mississippi river there was not, a continuous stretch of land from the sand bar from Louisiana main land to the extreme easterly end of what you have testified as the Newman's Tow head?

A. Continuous timber?

Q. No; I am asking about land. I am not asking about timber.

A. Yes, sir; at all times except high water there was a continuous stretch of land for about five miles wide. That is, up to 1912—up to the spring time of 1912.

Q. After the cut off of 1912 did any changes take place in the main channel of the Mississippi river?

A. In the old channel?

Q. Yes, sir; and if so, what?

A. Yes, sir; it began to fill up.

Q. Where did it begin to fill up?

A. At the head of the island. At the head of Newman's tow head.

Q. Was there an island there before 1912?

A. No, sir.

Q. When you speak of it as an island you mean at 1912 when the cut off occurred?

A. Yes, sir.

[fol. 147] Q. Now, after the two head was cut off, and as you said made an island out of it by cutting it off by the river you say that it began to fill up at the end, at the head of the tow head—Newman's tow head?

A. Yes, sir.

Q. After the time of the cut off in 1912 state if you know whether or not Newman tow head continued to grow, or to the contrary?

A. It continued to grow.

Q. In which direction?

A. Easterly, and the timber growth was easterly.

Q. After this cut off?

A. Just a minute. I would like to say easterly and southeasterly.

Q. Easterly and southeasterly?

A. Yes, sir.

Q. For how long after this cut off of 1912 were steamboats able to go up and down that portion of the river that you have designated as Albemarle Bend?

A. Well, about four years. In 1916 it built so high at the head of the tow head that a little boat could not pass through there at any stage. Small boats did not go through. There was a little lake in there but they could not go through. Packet boats did go in there but they came out

and went around because they could not get entirely through

[fol. 148] After this cust off against which shore was the channel of the old, the deepest part of the channel of the old river against which you call Newman's tow head or against the main shore?

A. Immediately after the cut off?

Q. Yes, sir?

A. Over to the main shore of Albemarle Bend.

Q. That was the deepest part?

A. Yes, sir; the last gut that came in, the extreme lower end, between the foot of the two head and Chotard Landing, right up against the Chotard shore, of the Albemarle Bend shore.

Q. Captain have you been on the Newman tow head recently?

A. Yes, sir.

Q. How recently?

A. In September, 1926, this year.

Q. Do you know what the character of the timber is on the Newman tow head now?

A. Yes, sir.

Q. What?

A. Cottonwood and willow.

Q. What about the size of the cottonwood at this time, Captain Reed?

The largest cottonwood there, breast high, would not be over thirty inches outside the bark.

[fol. 149] Q. Willow?

A. About 24 inches breast high outside the bark.

Q. Outside the bark?

A. Yes, sir; and a little over 22 inches inside.

Q. Any old original timber on the Newman tow head?

A. None of no kind. None of any kind.

Q. None of any kind?

A. No, sir; nothing on the island but second growth timber, cottonwood and willow.

Q. You have stated that after the cut off began in the upper end of Albemarle Bend, the bend began to fill up with alluvium. To which shore did most of these accretions that came after the cut off attach itself?

A. To the Newman tow head.

Q. You may have stated, but in order to get it clear, I will ask you how frequently from 1897, when you began steamboating, down to 1912, you had occasion to go up and down the Mississippi river through Albemarle Bend? About how often?

A. I don't think I missed traveling the river up there a year. I think I made it at least once a year, and at other times several times a year. I towed timber all up and down there.

Q. And in making these trips up and down the river in what capacity were you acting on the boat?

A. I was captain and pilot on a small tow boat, towing timber.

[fol. 150] Q. In the proper discharge of your duties as master and pilot state whether or not it was necessary or not for you to observe the shore on either side of the river as you went up and down?

A. Sure; a steamboatman has got to keep himself posted on the condition of the bank so he will know where is places that he can tie up, the course to be run, sand bars and so forth, and to keep posted on all changes that take place in the river on either side of the river. All those things are kept in mind by steamboatmen because he don't know at what time he will be or might be caught in the storm and have to tie up.

Q. State whether or not Albemarle Bend was the main channel of the river from 1897 till 1912?

A. Yes, sir.

Q. State whether or not if you know between the dates that you have testified, 1897 to 1912, there were any islands in the Mississippi River in Albemarle Bend between Newman's tow head and the Mississippi main land, the old original main land?

A. No, sir; nothing but a cavement of Albemarle Bend shore throughout the bend.

Q. What about the caving of the Albemarle shore?

A. It was a very rapidly caving bend.

Q. On which shore?

A. On the easterly shore, or the Mississippi shore.

Q. At that time what was the character of the banks along the Mississippi side of the shore?

[fol. 151] A. Until the government commenced to revet there it was very bad, a very bad caving bend. The bend was so bad that it was almost straight down.

Q. You said that the government was revetting there. When did the government begin revetting?

A. I think in the low water of 1910, and then where they revetted, of course it stopped caving.

Q. What was the purpose of revetting?

A. To save the bank there and the levee. It was getting near the levee. In fact, the levee began to cave in and kept caving in and they moved it back by looping. It would make another cave and they would make another loop and except where the government revetted it was going in by the acre, up until the day of the cut off. As soon as the cut off occurred in 1912 the current slackened in the Bend.

Cross-examination.

By Mr. Henry:

Q. Captain, your knowledge of the Mississippi river at the point in controversy dates back from 1894?

A. Yes, sir.

Q. And you were logging on that bar which you say projected from Willow Point?

A. Yes, sir.

Q. Louisiana?

[fol. 152] A. Yes, sir.

Q. That was just one trip that you made up there, as I understand it, with your father?

A. Yes, sir; one trip for that year.

Q. Well, you say, as I understand you, that you began steamboating, as I have it down here, about 1900?

A. Yes, sir.

Q. So there was six years——

A. (Interposing.) Steamboating up in there.

Q. So there was six years between?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. That is what I want to find out.

A. Yes, sir; that is right.

Q. Now, at the time that you were steamboating in 1900 you were deck hand and cook?

A. Yes, sir; and studying the river.

Q. You did not say anything about that when you were being examined?

A. Yes, sir.

Q. You said that you were a deck hand and cook.

A. Do you want to know what it was that I said on my direct examination?

[fol. 153] Q. Just permit me to ask you the questions and we will get along faster. You said that you were deck hand and cook on that boat?

A. Yes, sir.

Q. Now, knowing something about steamboating myself, having been on the river all of my life, a cook on a tow boat is a pretty busy man, isn't he?

A. Well, yes, sir, a man on a boat that does his duty is a busy man.

Q. And the cook is a busy man?

A. Yes, sir; but not necessarily the cook.

Q. How many men did you have to feed on that boat, Captain?

A. There were five or six of us generally. Sometimes six, including the cook.

Q. Including the cook?

A. Yes, sir.

Q. Isn't that a mighty small crew?

A. Yes, sir.

Q. Then you didn't run at night, did you?

A. Sometimes we did. I am not now before the local inspector.

Q. Well, I have been before them.

A. But I say that I am not now?

Q. Well, I'll report you.

A. I guess then that I will plead guilty.

[fol. 154] Q. A single crew, of course, might sometimes run at night, but I don't suppose you ran very much at night on that boat, did you?

A. No, sir; not often, but sometimes we ran at night. Thirteen hours is a steamboat day.

Q. I know it is, from 12 to 13. Captain, as a deck hand you had to keep the ropes going and were busy with other things, just as a deck hand is?

A. Sometimes we carried an extra man, a regular deck hand and sometimes we had two firemen and the extra fireman would help the cook and deck hand.

Q. After thinking about it a little don't you think now that you had more than five men on that boat for all of those purposes?

A. No, sir; five or six, and no more. No more than six. That was enough for that size boat. It was five ton displacement, although we did handle a half million feet at a tow at times, and of course, a man had to be always on his guard to do that.

Q. Sure, a man was bound to be on his guard, and your duty at that time was to watch the timber. Every man on board had to be on guard, and you had to look after the directions that were given you, and help the captain or the pilot, and look after the lines that were out there to hold the timber. Was that timber towed in the river or on a barge?

[fol. 155] A. Towed in the river, shoved by the boat. There would be men on the raft and——

Q. Well, I don't care about that. How long did you cook and act as deck hand?

A. How long?

Q. Yes, sir.

A. Until about—I can't remember when the boat was turned over to me. I was cook*ed* and was deck hand for a year — so after I got a license,—possibly three years.

Q. You were cook and deck hand until you got a license?

A. Yes, sir.

Q. When did you get your license? You were licensed when, Captain?

A. In 1897 about.

Q. In 1897?

A. I was twenty-four year o*lf* when I got my license.

Q. So you were cook and deck hand then for seven years?

A. From 1897 to 1900.

Q. That is three years?

A. Yes, sir.

Q. You said in 1900 you were cook. That is the way that I have it down here.

A. The boat was turned over to me in about 1900.

Q. Now then, in 1900 you say the boat was turned over [fol. 156] to you?

A. About 1900.

Q. About 1901, 1902 or 1903?

A. About 1900. Capt. Bland was the captain ahead of me, and while he was captain it was studying, working up to that point. Studying to be a pilot.

Q. You were a "cub?"

A. Yes, sir; a "cub" pilot.

Q. Now, when was the first time that you saw the property in question after you took charge—when did you say?

A. In 1900?

Q. Yes, sir.

A. It was along in the spring of that year.

Q. Of that year?

A. Yes, sir.

Q. Now, for whom were you towing logs?

A. R. F. Learned. R. F. Learned & Son, Natchez, Mississippi.

Q. And you were towing logs from Pittman Island, that was above this point?

A. Yes, sir; but I don't know whether we got them from that particular point in that year or not,—in 1900.

Q. How often did you go up there in 1900?

A. Six or eight times.

Q. Six or eight times?

[fol. 157] A. Six or eight times during high water.

Q. Six or eight times during the high water period?

A. Yes, sir; while the water was up.

Q. Pretty often, wasn't it?

A. Every three or four weeks maybe we would make a trip up.

Q. When did you go back again?

A. Well, every year I passed there.

Q. You would go up year after year and pass it?

A. Yes, sir.

Q. Pass this point?

A. Yes, sir.

Q. Now Captain, this first tow head that you described that appeared on the bar that you say formed out from Willow Point, that was only a short distance from the timber line?

A. That was the second tow head on the bar, the first one was joined there in my recollection.

Q. That was the first one joined there in your recollection?

A. Yes, sir; there were two depressions across there.

Q. When you went up there in 1900 you remember the tow head on the bar at that time?

A. Yes, sir.

Q. Where was that tow head?

[fol. 158] A. There was a prominent tow head right about 150 yards from the timber line.

Q. As I understand, what you mean by the timber line is of course the bar is down in the river and the timber line is up on the bank?

A. It is not necessarily much higher.

Q. I don't know that it is much higher, but it is up on the bank, whatever it is, I don't care whether it is two feet or four feet?

A. Sure. It is not in the water. It is on the bank.

Q. That is what you mean by timber line of property along the Mississippi River?

A. Yes, sir; it is timber growing on the bank.

Q. And this tow head that you say was there when you first went up there was about 150 yards—when did you say that was?

A. I said in 1900.

Q. That far from the timber line?

A. Yes, sir; 150 yards.

Q. Now then, you say that there was another tow head formed?

A. There was a tow head in the old timber line, as I started to say—another depression between that and the timber back there.

Q. I want to locate the second tow head to which you refer?

[fol. 159] A. The second tow head it was about 150 yards from the timber line on the bank as you see there. I say about 150 yards east on the bar of the timber line.

Q. How far was the first tow head then?

A. It was in the line of the timber.

Q. In the line of the timber?

A. Yes, sir.

Q. So you have the two tow heads. Now, the first one which was formed was in the line of timber in the main bank?

A. Yes, sir.

Q. And the second one was about 150 yards——

A. Eastward.

Q. Eastward from the timber line on the bar?

A. Yes, sir; the first tow head being in the timber line with a depression between that and the timber line and some timber behind it.

Q. Now, at that time, Captain, tell the court how far this tow head No. 2, we will call it, was from the Mississippi shore?

A. I would say about, the Mississippi shore line of Mississippi was about two miles and a half, probably. Two and a half I will say.

Q. Easily two and a half?

A. About two and a half.

[fol. 160] Q. Two and a half miles?

A. Yes, sir.

Q. Now then, as the river continued to——

A. (Interposing.) Beg, pardon, Judge, if you will allow me—from the shore line of the Bend. It was not from the main shore line. The Tennessee bar extended down.

Q. I am not talking about the Tennessee bar, but from the shore line of the Bend.

A. From there I will say two and a half miles.

Q. Two and a half miles?

A. Yes, sir.

Q. Now then, did the river continue in its course and continue to cave out what you have designated as Albemarle Bend?

A. Yes, sir.

Q. And it would place the tow head further from the Mississippi shore as it continued to cave?

A. The Mississippi bend tow head.

Q. The bar commenced at Tennessee Landing, the sand bar?

A. Yes, sir; several miles above this property. Tennessee bar came down in front of——

Q. Wait, and I will get to that, Captain. Tennessee bar,—or Tennessee Landing, there where the bar had its

interception, that was about two miles above Willow Point on the Mississippi side, wasn't it?

[fol. 161] A. Yes, sir; Tennessee Bar Landing was. Tennessee Landing was behind the bar.

Q. Behind the bar?

A. Yes, sir.

Q. Now then, that Tennessee bar was not affected by the cutting in on Albemarle Bend was it?

A. No, sir.

Q. Now, what do you know of the caving of Willow Point?

A. On the extreme northerly shore or the Bend shore Willow Point was at the foot of the caving bend or reach, a straight force of the river up towards Salem. From Salem down past Willow Point Landing and on down to the head of Newman's tow head, it was caving in low water.

Q. Now, when did the caving start?

A. Ever since I have known it it has been caving.

Q. Then, you have known it since 1900?

A. Yes, sir.

Q. And it was caving in 1900?

A. Yes, sir.

Q. And continued to cave?

A. Yes, sir.

Q. Now, this caving project at Willow Point, that had the effect of changing the current that much lower down on the Mississippi shore did it?

A. Yes, sir; the bar built down. The Tennessee bar [fol. 162] filled down.

Q. It was bound to be down?

A. Yes, sir.

Q. Because the caving was against the northern bank as you say, and the caving had been going on ever since you could remember it?

A. Yes, sir.

Q. That would throw the current lower down the river would it?

A. Yes, sir.

Q. Now then, Captain, at the time that the current came by the Willow Point as you saw it caving, and since you remember it, the current was thrown lower down,—lower down on the Mississippi shore, and that left the Tennessee

bar up above there did it, and gave it a tendency to also increase,—go down further and further?

A. How is that?

Q. Well, you say the Tennessee bar is across the river now?

A. Yes, sir.

Q. And it is extending down the river, is it?

A. It is trailing down in front of the property.

Q. Down in front of the Foster property?

A. Foster?

Q. Yes, sir?

A. On which side of the river?

[fol. 163] Q. The Mississippi side.

A. The Tennessee bar was lower at the start.

Q. And went on down below it, and that went on down in the direction of Ingomar, did it?

A. Yes, sir; it filled down in the direction of Ingomar.

Q. Now, what distance do you put tow head No. 2 to the Mississippi shore where the Tennessee bar was?

A. About three quarters of an mile across the foot of the bar?

Q. Across the foot of the bar?

A. Of the tail of the Tennessee bar.

Q. About three quarters of a mile only?

A. Yes, sir; that is, in a northerly direction.

Q. I know it is.

A. Northwesterly direction.

Q. But it took in the distance some of this bar which you said formed the front of Willow Point?

A. Took some of it.

Q. Yes, sir; you have got to go across some of it to get to that Tennessee bar, or are you saying that the Mississippi river there between the two bars was three quarters of a mile?

A. Before it got down really——

Q. (Interposing.) I am not talking about that. I am [fol. 164] talking about from tow head No. 2 which you said came there after you got there.

A. I can't answer the question, Judge, unless you give me a chance.

Q. I know.

A. Well, ask your question then.

Q. The question I asked you was the distance of tow head No. 2 which you said came there after you knew the river up there, and what the distance from that tow head was over to the Tennessee bar as it then existed and laid and continued to extend down the river?

A. In low water about three quarters of a mile.

Q. In ordinary water how far?

A. In ordinary water all of the Tennessee bar was covered, in that neighborhood. About half the river.

Q. In other words, that low bar was just like part of this tow head you spoke of?

A. Yes, sir.

Q. Of course, it got started low and got filled up?

A. Yes, sir.

Q. And it was about three quarters of a mile?

A. Yes, sir; in low water.

Q. Now, do you recall the house at Willow Point which was occupied by Mr. Newman?

A. I don't remember any residence. I remember some houses around there.

[fol. 165] Q. Don't you remember the old residence, a big house there at the Point?

A. There was one there used as a landing mark.

Q. Did you know one there outside of the levee?

A. I knew of one outside the levee, but I did not know it was a residence. It was a camp in the winter time,—not a residence.

Q. What became of the residence?

A. I don't know what became of the residence.

Q. Suppose that there has been some testimony here about it caving in the river, do you know anything about that?

A. It could have done that.

Q. Well, if so, why would you not have known it?

A. I was not there, possibly, at the caving.

Q. Certainly, but you say you are a pilot, and you have got to know all of the land marks and everything like that?

A. Yes, sir.

Q. You have to know those things as you go along up the river?

A. Yes, sir.

Q. You knew that there was caving there on that bank, did you?

A. Yes, sir.

[fol. 166] Q. I believe you testified about the caving?

A. Yes, sir.

Q. It has been caving ever since you knew it?

A. Yes, sir.

Q. And it has been caving until it took this house which sat in about 150 yards outside the levee?

A. No.

Q. You never knew it?

A. I never knew it as a residence; no.

Q. But do you say that you didn't know that it happened?

A. I knew there was a caving bank.

Q. Tell the court whether or not you knew, as a matter of fact, that the Newman house caved into the river?

A. No; I didn't know it.

Q. You never heard of it, did you?

A. I heard of Newman's house; yes, sir.

Q. What became of it?

A. I don't know.

Q. You don't know?

A. No, sir; I can tell you what might have happened to it.

Q. I don't think we want any prognostication or guessing.

A. All right, Judge.

[fol. 167] Q. Now, are you familiar with the Mississippi River,—the islands in the Mississippi river from New Orleans to Greenville?

A. Yes, sir; more especially from Vicksburg to Greenville, or from Natchez to Greenville, I will say.

Q. Then, you were, of course, acquainted with Island No. 98 were you?

A. No. 98?

Q. Yes, sir?

A. No, sir.

Q. You know that the islands in the Mississippi river were sometime ago surveyed and charted by the United States Government, beginning up about Cairo, and coming on down, and numbered, don't you?

A. Yes, sir.

Q. Have you ever heard of Tullos Island?

A. I have heard of it.

Q. Have you ever seen it?

A. No, sir.

Q. You don't know anything about it?

A. I know what became of it—where they said it was—where the map shows it was.

Q. You have seen the maps have you?

A. Sure, I have studied the maps while I was studying the river.

[fols. 168 & 169] Q. You have studied the maps of the river? You have been studying the maps ever since this law suit begun, have you, Captain?

A. I may have looked at the maps.

Q. That is all right, though.

A. I am a map fiend. I like to study maps.

Q. When have you studied the map with reference to Tow Head No. 2, Newman's tow head, which we have been talking about here, and when did you study the map in reference to where they claim the tow head is today in regard to where Tullos Island is?

A. Studied in what regard?

Q. To show that it was the same position right today where Tullos Island was?

A. Yes, sir.

Q. Don't you know that it is in the same position where Tullos Island was when it existed?

A. Some of it is I think over in the plantation.

Q. Absolutely on it is it, and the map here shows it?

A. Part of it is—I will not say on it.

Q. In other words, that tow head which is claimed is a little larger than where Tullow Island was?

A. I don't know just what acreage Tullos Island was.

[fol. 170] Q. What's the acreage of the tow head?

A. Why, there was something like several hundred acres, 1,800 or 2,000 acres. There is that much in the entire tow head today.

Q. Now, you know where Tullos Island was, and you know where Newman's tow head is now on account of the fact of the big timber on it?

A. Big timber?

Q. Yes, sir?

A. There is no big timber on it.

Q. Not even today?

A. No, sir.

Q. What do you call big timber?

A. I mean timber over thirty inches in diameter, breast high.

Q. In diameter?

A. Yes, sir.

Q. Don't you know that right there where Tullos Island is today——

A. Tullos Island does not exist.

Q. Don't you know that on Tullos Island today there are cottonwood trees which will measure, as you say, thirty inches in diameter?

A. Not on Tullos Island; no, sir.

Q. On the tow h*e*ad—Newman's tow head, and that's [fol. 171] the reason that you recognize it?

A. Because I knew it was Newman's tow head.

Q. I say, on account of the timber on it?

A. I recognize it as being land and timber.

Q. You recognize it on account of being big timber. You said that there was no big timber, but I asked you——

A. (Interposing.) None over thirty inches in diameter. That is not big timber.

Q. No; not the way you fellows cut and slash it around. That is all I care to ask. I think my associates may want to ask him a question or two.

By Mr. Creekmore:

Q. You say, Captain, you were over on that tow head in September?

A. Yes, sir.

Q. At what point did you land?

A. I landed about the foot of the bar that came down the west side of the tow head where you get in there, just below the shanty on the bar, about 100 yards.

Q. There is a cabin up there just above the willows on the bank and you landed up there just about 100 yards above that cabin?

A. Landed about 100 yards below that cabin.

Q. That's where you landed?

A. Yes, sir.

[fol. 172] Q. When you got on the tow head or island where did you go from that point?

A. One time I went straight across from where we landed there on the Mississippi side. That was in December, December, 1912. That was a part of the tow head in 1912.

Q. In other words you went east?

A. Yes, sir; about east.

Q. All right, did you go north?

A. We went up quite a distance and came back. A rain came up that evening and rained us out, and in the next day or two I went back on the land in about the same place—landed in about the same place and walked up the bank until we struck a trail or a path and went up just above the shanty and clear across to what was the edge of the old river, got over there to the old shore, what I judged to be the old shore, about the shore — 1912. That was not the edge of the bar but the edge of the timber. I went back through the timber away and on back out and in the end came up to a place away up there with a wire fence around it, and along back down the shanty and on down.

Q. Who was with you?

A. My father, Louis E. Reed, who had charge of the boat.

Q. For what purpose did you visit the island?

[fol. 173] A. To see what the conditions were there, the size of the timber and how much *and how much* growth there was there since I was there before.

Q. With a view of testifying in this case?

A. Yes, sir; to get it in my mind.

Q. And you made your investigation having this litigation in mind?

A. Yes, sir.

Q. Now, Captain, tell me what a tow head is?

A. What a which?

Q. A tow head?

A. A tow head is a formation of land on a sand bar, where the bar forms first, and sometimes—do you want me to tell how it forms?

Q. I want to get a distinction in my mind between a sand bar and a tow head?

A. A sand bar is a white bar that grows out from the main shore, and then the tow head forms on top of that bar.

Q. A tow head is higher than a sand bar?

A. Yes, sir.

Q. Does anything grow on the sand bar?

A. Not unless there is soil; no, sir.

Q. And then it becomes a sand bar as—it becomes a tow head when the soil gets there?

A. It depends on the conditions, the way it forms, and so forth.

[fol. 174] Q. What grows on a tow head?

A. Cottonwood and willows, generally.

Q. Anything else?

A. Sometimes hardwood—scrubby stuff. It depends on the conditions.

Q. Now, when you went to the island I believe you said that you found no timber except cottonwood and willow?

A. Growing; yes, sir.

Q. The willow was down next to the water on the low land?

A. The willows generally grow on the low land and the cottonwood on the ridges—on ridge land.

Q. On the high land was the cottonwood?

A. Yes, sir.

Q. Right up there by the land near the cabin there when you went up that path you spoke of there was a marked bank of about ten or twelve feet high between the cottonwood growth and the level where the willows were growing, was there not?

A. No, no; not necessarily between the willows and cottonwood.

Q. Where was the cottonwood? Did not the cottonwood predominate on the bank some ten or twelve feet higher than the ground on which the willows predominated?

A. Not only a few feet.

Q. Right at this cabin?

[fol. 175] A. There was a little bank there and a new deposit there in front of the cabin and some willows there.

Q. The bank there was some ten or twelve feet high, wasn't it?

A. Yes, sir.

Q. Now, the cottonwood up on top of that bank, the sand and soil had been washed away from the roots by the caving or by the waves, had it not?

A. Immediately on the edge of the bank.

Q. Certainly, right along there where the path ran. Those cottonwoods along there are from eighteen to 30 inches in diameter, are they,—lots of them?

A. Not in that neighborhood. I did not find anything outside of thirty inches outside of the bark. The biggest I found would be twenty-four inches outside the bark.

Q. Trees there twenty-four inches?

A. Yes, sir.

Q. Now, at the time that you first saw this point which I believe you said was in 1894, I believe you said that the tow head came out to the point where the cabin was standing, or now standing?

A. In 1894 I don't remember whether the tow head was on that bar.

Q. All right, how early did the tow head then get out to the point where the cabin is now standing?

A. The first time that I noticed that it had become promi-
[fol. 176] nent was in 1900.

Q. About twenty-six years ago?

A. Yes, sir.

Q. And was there a growth or not then sprung up on it—the timber growth at this point?

A. It had got big enough to be prominent timber on the bar.

Q. How high was the timber at that time?

A. I judge that some was thirty-five or forty feet high.

Q. How high was that above the surface of the water?

A. You would have to tell me what the stage of the river was.

Q. Well, in the ordinary stage?

A. The tow head was about as high as the main land over next to where I told you I saw the old house. The tow head was just about as high as the main land.

Q. On the Louisiana side?

A. Yes, sir.

Q. That was the condition in 1900?

A. Yes, sir.

Q. Now, what is the elevation of this tow head now?

A. It about keeps pace with the main shore.

Q. About the same?

A. Yes, sir; on top of the tow head.

Q. As you go back now along the tow head up towards the head of it, the elevation perceptibly and rather rapidly [fol. 177] increases, does it?

A. No, sir; if there was any elevation at all I did not notice it. The highest part of the island is next to the chute today, and the biggest timber is next to the cut off.

Q. Is all of that tow head covered with timber today?

A. Virtually all; yes, sir, except between the head of the tow head and the tail of the Tennessee bar, and there is an old field in there, and on which there is nothing grown up in timber,—no timber at all. But on around up next to the shore it is grown up in willows and cottonwood.

Q. Back on the north side of this tow head there is several hundred acres of open land, and some of it is covered with Bermuda grass as much as half a leg high?

A. In the north end.

Q. North central part of the island?

A. No; there is a Bermuda field in there around on the northeast corner which is right up close to the river. There is a Bermuda patch in there.

Q. Any timber on that?

A. I don't think it is timbered.

Q. Timber did not just spring up there?

A. No; it is all a sand deposit there, and it is of such a mixture that there is very little vegatable stuff on it, and just this scrub grass growing up on it.

Q. It takes pretty good soil to get Bermuda grass a [fol. 178] half a leg high?

A. I don't know that it does. All of these sand bars have Bermuda grass on them.

Q. Is there any timber there other than cottonwood and willow?

A. No merchantable timber. Not what you would call a tree.

Q. Is there any poplar there?

A. Poplar does not grow in that land.

Q. I asked you if any poplar grew on the island?

A. No, sir.

Q. Not a tree?

A. Not that I know of; no, sir.

Q. Any ironwood?

A. There may be some ironwood bushes. I don't know of any trees, that is, any merchantable timber except cottonwood and willow, today—not a tree that is merchantable.

Q. You say you are a map fiend. Have you examined this map showing Tullos Island?

A. Not very closely. I just looked over it while others were looking on.

Q. You have examined it closely enough to know that Tullos Island, as shown on this map, occupies at least the same position as the tow head that we have been talking about occupies?

A. I will say that it does on the map; yes, sir.

[fol. 179] Q. I am speaking about the map. It shows Tullos Island as at the same place as the tow head is today?

A. To my mind it shows the foot of the island, the southeasterly part of the island possibly. Here is where you call Tullos Island was. Right now on the map what you call Tullos Island, and there is no timber back in here.

Q. It shows Tullos Island now on the west side of the main channel?

A. Yes, sir.

Q. Here is where the island is today, is it not?

A. Yes, sir.

Q. Now, how much of the tow head occupies the land that was formerly occupied by Tullos Island?

A. I don't know. I have not viewed it that close.

Q. As a matter of fact, Captain, the map shows the elevation of Tullos Island, does it?

A. I don't remember about that.

Q. You don't remember about that?

A. No, sir.

Q. Do you know what the relative elevations are on the tow head?

A. No, sir.

Q. You are sheriff and tax collector in your county?

A. Adams county; yes, sir.

Q. Of course, you are familiar with land numbers, sections and townships and so forth?

[fol. 180] A. Yes, sir; to some extent. The same as an ordinary sheriff.

Q. I hand you, Captain, a map of a survey made in November, 1823, of township 9, range 8 west of the Choctaw

District, made by the Government, showing an island here, Tullos Island. Now, that shows Tullos Island is in what Section, Captain? Twenty and twenty-one?

A. Section 29 isn't it?

Q. Down here a little in Section 30 isn't it?

A. Yes, sir; I suppose that is the number.

Q. Now, let us look at the map of 1823—I mean the chart made in 1913-15, Chart No. 47, which shows Newman tow head?

A. Yes, sir.

Q. Tell us what sections Newman tow head is in? Here is the county line here. What sections is the Newman Tow Head in?

A. Do you want to take that island in?

Q. It takes in a fractional part of 17, 16, 15, 22, 21 a part of 20 and a part of 28 and a portion of 29?

A. Yes, sir.

Q. Now, as to 29, Newman tow head before the cut off included all of this in 29 west of the present channel, did it?

A. Newman tow head did not; no, sir.

Q. Wasn't this once a part of Newman's tow head?

[fol. 181] A. No; that was a part of the Newman property, but the tow head was out on the bar. The tow head was higher south of here. This in here is sand, through here.

Q. The patch of water shown on the map west of the present channel, was that the old channel?

A. That is the depression through the property the same as this was. This is white sand except in overflow or flood stage. It is wet through here and especially dry here at this place. This is the higest part of it today.

Q. So the map shows Tullos Island, in part, covers the same territory as the Newman Tow Head?

A. Newman tow head covers a part where the island was; yes, sir.

Q. Well, either way, I don't care which way you put it.

A. Yes, sir.

Q. The timbered part of Newman's tow head is the part that is shown as the one having been Tullos Island?

A. Is shown on Tullos Island?

Q. Yes, sir?

A. Yes, sir.

Q. That is where the timber now is on Newman's Tow Head?

A. Yes, sir.

(Witness excused.)

[fol. 182] Recess until 2 o'clock p. m.

At 2 o'clock p. m. met pursuant to the above adjournment, and the introduction of testimony by the complainant is resumed. All parties present as of this morning.

By Mr. Dale: Complainant now offers in evidence Exhibits A, B, C, D, E, F, G, H, I, J, K, and L attached to the original bill of complaint.

Capt. CHARLES H. WEST, called as a witness on behalf of the complainant, was sworn and testified as follows:

Direct examination.

By Mr. Dale:

Q. You are Capt. Charles H. West?

A. Yes, sir.

Q. What is your occupation?

A. Civil engineer.

[fol. 183] Q. Do you hold any official position at the present time?

A. I am a member of the Mississippi River Commission.

Q. How long have you been a member of the Mississippi River Commission?

A. Nearly seventeen years. I was appointed in January, 1910 by President Taft, and I took the oath of office on February 5 of 1910, so my membership dates from the oath of office, which was February 5, 1910.

Q. Prior to February 5, 1910, did you hold any public office or position?

A. Yes, sir; I have been an engineer for forty-two years. I am a graduate of the University of Illinois, of the class of 1884. I hold the degree of that class of B. S. in C. E.,

Bachelor of Science Civil Engineers, of the class of 1884. I began the practice of Engineering immediately after leaving the University and have been in the continuous practice ever since, or for about forty-two years. My first experience after graduation was on the Mississippi river in various subordinate capacities. Sometimes in the employ of the United States; sometimes in the employ of the Mississippi Levee District and sometimes doing private work—anything that I was called upon to do, until 1892, when I was appointed as a subordinate engineer, inspector surveyor and superintendent of construction with the [fol. 184] United States Engineers. I was stationed sometime after that period, 1882, in Mississippi and sometimes in Arkansas, being in the two States continuously until August, 1898, at which time I was appointed chief engineer of the Mississippi Levee District. Being a little uncertain as to the position that I was appointed to, whether it was political or not, I asked for a leave of absence for twelve months, without pay, that I might take the position of chief engineer of the Mississippi Levee District, it being understood that if I returned to the service——

Q. (Interposing.) I don't think that is necessary to go into that detail. I will ask you, Captain, if your connection with the Mississippi Levee District embraced in territory now Willow Point, or opposite Willow Point? Did it cover the territory in the Mississippi river opposite the property now in litigation—the point now in litigation?

A. It covered all of the Mississippi side of the river from the Bolivar county line, wrich is some fifteen or twenty miles north of the mouth of White River, down to what is known as Eagle Lake in Warren county. It did at that time. The levee ended at Eagle Lake in Warren county.

Q. Would *would* that cover the territory in Mississippi opposite Willow Point in Louisiana?

A. Yes, sir; it extends several miles south of Willow Point and Albemarle Bend, into the next bend below that, [fol. 185] I can't remember the exact miles, but if you will let me see the chart I will give you the exact number of miles.

Q. I don't care about that. Approximately about how far?

A. I would say twelve or fifteen miles. That is just an estimate, but I can give it to you exact from the chart, as they are all measured.

Q. I now show you a map which counsel for the complainant has marked Exhibit M, and I will ask you, Captain West, to state what that may represents—shows—and how it is made?

A. The map referred to is a chart, No. 45, of the Mississippi River Commission survey of the Mississippi River, made in 1882, upon which has been projected the township and section lines in Mississippi and in Louisiana, of the Government Land Survey in Mississippi of 1823, and in Louisiana in 1824. The township and section lines are projected vertically upon the Mississippi River Commission map or chart of that section of the river.

Q. Now, Captain West, is this all shown on one map or is it shown on more than one map?

A. This is the Willow Point there in Louisiana and Albemarle Bend opposite in Mississippi, of the territory in question, as shown on the Mississippi River Commission Chart No. 45 of the survey of 1882. In order to show the river [fol. 186] south of that territory which has any bearing upon the matter in question, the Mississippi River Commission Chart No. 46, instead of being two separate sheets, have been put together with one sheet, showing that which was reached by both charts Nos. 45 and 46, and therefore the township and section lines in Mississippi and Louisiana of the original land surveys of 1823, in Mississippi, and 1924 in Louisiana, are extended on down so the two charts combined show, not only Willow Point and Albemarle Bend, but show the territory for several miles south of there along the Mississippi river, taking in what was originally Eagle Bend.

Q. Did you say Eagle Bend?

A. Yes, sir.

By Mr. Dale: Now then the complainant offers to file in evidence the map marked Complainant's Exhibit M.

By Mr. Sharp: The defendant desires to interpose an objection to the introduction of the map because it is alleged or supposed to be based or drawn from the original field notes, and the field notes are the best evidence. This itself can be merely secondary evidence.

We object to it for the further reason that the map is not authentic any way—not in any way. It is not authenticated in any way to show the authority under which it was [fol. 187] made or under which it was issued, whether or not it is a correct copy or a correct map as shown by the field notes.

By Mr. Dale:

Q. Now, Captain, I will ask you to state whether or not—state what you know as to whether that is a correct map as shown by the Mississippi River Commission and also as shown by the maps in the Land Office showing the survey of 1824 of the Louisiana shore and 1823 of the Mississippi shore?.

By Mr. Sharp: We also object to that interrogatory for the reason that the custodian of the records in the Land Office would be the only proper party to testify as to the correctness of the copies of records in his office. And the custodian of the field notes, or the maker of the field notes is the only one who can testify as to their correctness—the correctness of any map as compared with the field notes.

By Mr. Dale:

Q. There would be no certification to this entire map, as it existed, by any commissioner of the Land Office would there? Could there be?

A. What is that?

Q. There is no map that shows all of the data on one map existing in the Land Office, is there, that you know of, Captain?

[fol. 188] A. I would have to answer the question of the attorney by asking a question. Have you in evidence a c-rtified copy of Chart No. 45, and chart No. 46 of the Mississippi Commission of the Survey of 1882?

Q. We have.

A. Then this chart of the Mississippi River Commission if taken from the same plate that the certified copy is printed from. Therefore, it is no more than one carbon copy is to another carbon copy of the same original drawing spread upon and lithographed from the same plate. That is the Mississippi River Commission's chart.

Now, I have another question to ask. Is there is evidence a certified copy of the Government Land Survey of Township 19, North, Ranges 13 and 14 East; and is there in evidence a certified copy of the original land survey in Mississippi of Township 9, North, Range 8 and 9 West?

Q. I will answer they are.

A. Then this——

By Mr. Sharp (Interposing): Then we want to get possession of them if they are on file here, because they have escaped my attention.

By Mr. Dale: There is from Louisiana.

By Mr. Sharp: But not in Mississippi.

By Mr. Creekmore: That is a serious controversy in this [fol. 189] case as to whether or not the projection is correct.

By the Witness:

A. Whether the projections of the Mississippi townships and sections are correct?

By Mr. Henry: Whether they co-ordinate.

By Mr. Dale:

Q. Captain West, do you know whether the townships in Mississippi and the townships in Louisiana, at this particular point of the Mississippi River are properly co-ordinated and correctly co-ordinated on the map?

By Mr. Sharp: We object. The field notes are the best evidence and the Mississippi field notes are not in evidence nor filed with the exhibit.

By Mr. Dale:

Q. How did you get up that data shown there between the townships, sections and ranges shown on that map, Capt. West?

By Mr. Henry: He didn't get up that map.

By Mr. Dale:

Q. How was that map gotten up showing the sections, townships and ranges, if you know of your own knowledge [fol. 190] how it was done?

A. Shall I take either side of the Mississippi River first?
Q. Take the Mississippi side first.
A. Or shall I take the whole thing on both sides?
Q. Do as you please.
A. I will take first the Mississippi side. The correctness of the Mississippi River Commission chart of the survey of 1882, I have explained the township and section lines of the original government land survey of 1823 in Mississippi, were projected upon that commission chart by taking the township maps as furnished by the Government, reducing those charts to the same scale as that of the Mississippi River Commission chart which is one to twenty thousand. Now, in order to put them on the Commission chart the monument- which marked the land lines and corners on the ground of the original Government land survey were located. The survey of the river by the Mississippi River Commission was made by triangulation. The whole river, the east and west sides were carried along together, and located one with respect to the other by tr-angulation and permanent marks were left on both sides of the river. Frequently those marks were stones, very deep in the ground, with marks chisled in them to identify them. All of those marks of the Mississippi River Commission Survey were located astronomically, and by astronomical points by triangulation. So the position, even though they were lost—[fol. 191] covered up by the sediment,—could be located—relocated, anl from time to time the Mississippi River Commission has had survey parties to relocate and find the permanent marks of the survey throughout the entire reach of the river. Now, the permanent marks, corners and lines of the original government survey were connected with such permanent marks of the Mississippi River Commission survey, and being connected, the land lines could be absolutely fixed in position with respect to the survey by the Mississippi River Commission, and either one could be taken on a base from the connection between the permanent marks on the ground of the Government Land Survey, the permament marks in the ground of the Mississippi River Commission. Either one could be laid down as a basis and the other one projected over it in its exact position. Now, as a further evidence as to why we know the land lines are laid down correctly on the map, and we are speaking of the Mis-

sissippi side now, the line between the counties of Issequena and Warren, in Mississippi, is laid down on the ground and is known as the political division between those counties of the State of Mississippi. It is known from all of the records of the State that that line is the south boundary of Township 9, North, Range 8 West of the land survey in the Choctaw session, or the survey line west of the Mississippi [fol. 192] river. That is the land survey line which is the boundary between those two counties. When the Mississippi River Commission made this survey the Commission was not interested particularly in the political division of the counties and states, but the topography which the surveyors jotted down, wherever there was a well defined line of a section, a township, a range, or any other political division of the land survey, they noted it and put it on their charts. Now, on the composit- chart which shows the land survey of Mississippi projected upon the Mississippi River Commission survey of 1882, the Commission's chart shows the line between Issequena county and Sharkey county located on their chart that is identical with that same line as shown on the township map. Therefore, the two coincide exactly. Now, on that land survey——

Q. (Interposing.) What two coincide?

A. The Mississippi River Commission survey of 1882 and the Government Land Survey of the townships and Sections of 1823. It is shown on the map here and it is shown on the Commission's Chart the line between Issequena county and Warren county. It is the south boundary of Township 9, North, Range 8 west. It is the same thing as shown on thr projection of the land lines. There could be no doubt about the fixing of the original Government Land Survey with respect to the Mississippi River Commission Survey as far as the north and south direction is concerned. [fol. 193] Now, there might arise a doubt as to whether it was correctly fixed in an easterly or westerly position unless there was some evidence to show. Here on the Commission's Chart No. 45 the line between sections 16 and 17 is shown on that chart. It is identical with the line between Sections 16 and 17 as shown upon the Government Land Survey chart. The same is true as to the line *eb*tween Sections 8 and 9—I am glancing at random—and between Sections 9 and 12; as between Sections 10 and 11. There are

several others, but that is enough to fix the identical location of the land surveys—Government land surveys of 1823, with the lines of the Mississippi River Commission survey of the river of 1882, in an east and west position. Now, having fixed them identically both in an east and west and a north and south position, they naturally co*in*cide and are correct.

Again, it will be remembered that the Government is not deeply interested in land lines, and the Government is prohibited by law from paying for anything—for any right of way, for lands over which they go, requiring the local authorities to provide those sights of way, but being certain that the proper right of way is provided before they will destroy the property. Therefore, the Levee Boards, in order to know what right of way they take from the owner, must know the sections, and not only the sections and townships, but the identical me*e*ts and bounds of that particular [fol. 194] piece of land. In order to know that they must connect the land lines of the original government survey in order to satisfy the government that here is the right of way provided for, a definite piece of land. The same thing is true in Louisiana as in Mississippi, and all of these land lines have been tied up with the Government marks of the Mississippi River Commission surveys.

I don't see how I can make it any clearer as to why the land lines of the original government land surveys are correctly projected upon the Mississippi River Commission charts. Those are known, not only in this locality, but in all localities from one end of the Mississippi river to the other.

Q. Does that map show the proper projection? Show it correctly?

By Mr. Sharp: We object to the question.

By the Commissioner: Let him answer, and the objection will be considered later.

A. That is what I have just stated, that it does show the correct position of the land lines on both sides of the river with respect to the Mississippi River Commission surveys.

By Mr Dale:

Q. Now, I am going to ask you to take all of the maps [fol. 195] which have been offered in evidence and give a general history, insofar as they show, and your knowledge goes, of the changes that have taken place at the point in controversy, on both sides of the river. I am not going to ask you the specific questions, but will ask you to go ahead and state it in your own language?

By Mr. Butler: Before he goes into that explanation, Judge Dale, let us have a copy of this so we may be able to follow you as you go along.

By Mr. Dale: We now offer in evidence an Exhibit marked Complainant's Exhibit N, the same being a blue print.

By Mr. Sharp: It is hereby agreed that the blue print marked Exhibit N, showing township 9, Range 8 west, in the state of Mississippi, as surveyed in November, 1823, by Marion Hitchcock, deputy surveyor, assisted by G. Davis, surveyor of public lands south of the State of Tennessee, and appearing to have been certified to by R. D. Moore on the original plat from which this blue print was made, as showing a map of township 9, range 8 as appears in the Land Records in the office of the Land Commissioner of the State of Mississippi; that it may be admitted in evidence without further certification by the Land Commissioner or other official.

[fol. 196] Q. You may proceed, Capt. West.

A. The Government Land Survey Chart of the survey of 1824 in Louisiana, which was a survey carried northward from Red river and afterwards towards the Mississippi, is shown on Chart marked Exhibit A. This chart shows what is termed and known as Newman's Point, in Louisiana. The chart of the Government land survey of 1824, as shown on the township plat Township 8 Range 13 East, shows the territory bordering on the Mississippi and Louisiana below Newman's Point.

Exhibit N shows Township 9, Range 8 West of the Government Land Survey of 1823, in Mississippi. Shows the territory on the east side of the Mississippi River opposite Newman's Point.

Exhibit BB shows Hopkins' Island which was surveyed in 1869-70. The survey was part in the fall and part in the spring, and was sectioned as a part of Louisiana *as a part of Louisiana*, connected with the general land survey of the State of Louisiana made in 1824.

Exhibit C is a chart of the Mississippi River Commission of a survey of 1882, made on a scale of 1 inch to one mile. This chart shows the Mississippi River in the vicinity of Newman's Point and Albemarle Bend, and also for some distance below that.

Q. How is the survey of 1882 shown on the map, Exhibit C?

[fol. 197] A. This chart shows the Mississippi River as it existed in 1882, in black lines and symbols. There has been drawn on this chart, in red lines, two banks of the Mississippi river, made from a survey by the Mississippi River Commission in 1894. These red lines were superimposed upon this chart of a survey of 1882 by the Mississippi River Commission. In other words, these red lines were put there by the Commission in the central office.

Q. I note some red, broken lines on this same map, Captain West, and I will ask you what they represent?

A. On this chart is a broken red line. These broken lines represent the edge of the bar at the time of the survey, all of which is explained in print upon the face of the chart.

Exhibit D is the same as Exhibit C with the addition of the shore and the by-lines of the Commission's survey of 1903.

Exhibit E is a chart on a scale of one inch to one mile of the Commission's survey of the reach of the river in question made in 1913.

Exhibit F is a chart of the reach of the Mississippi River in question, on a scale of 1 to 20,000, of the Mississippi River Commission's survey of 1913.

Exhibit G is a blue print showing the township, range and section lines in Mississippi and Louisiana, covering [fol. 198] the territory in question, of Mississippi in 1923 and of Louisiana in 1924. These, and succeeding blue prints marked Exhibits H, I and J, were made by myself, (C. H. West), for the purpose of illustrating the position of the river at the time of the original government surveys and of

changes after that with respect to the township and section lines on the two sides of the river, in the vicinity of the territory in controversy.

Q. I will ask you now to give a progressive history of the changes in the Mississippi river as shown by these maps?

By Mr. Henry: We object to that. You are asking of this witness a general history, which would not mean anything at all for the maps will all speak for themselves, and what the witness might say would be merely an opinion as to what the general history is. One man might tell it one way and another man another way. It is just a mere matter of opinion of the witness.

By the Commissioner: Let the objection be noted, the same to be considered along with the others, and to be passed on later.

By Mr. Dale:

Q. You may proceed, Capt. West?

A. The blue print marked Exhibit G shows Willow Point [fol. 199] as defined by the government survey of the State of Louisiana in 1824. It also shows, by broken and dotted lines, the outline of Willow Point as shown by a survey made by Louisiana in 1866. The heavy lines indicate the Mississippi and Louisiana shore lines as they existed at the time of the original Government land surveys. The broken dotted line indicates the mid-river distances as it existed at that time. This chart shows Tullos Island, later known as Island No. 98, as being on the Mississippi side of the river, and as being a part of Township 9, Range 8 West, of Mississippi, and occupies parts of Sections 20, 21, 28, 29 and 30 of that township.

Exhibit H shows the position of the Mississippi River as it existed in the Mississippi River Commission survey of 1882, when that survey was made. This chart shows the outline of the eastern end of Willow Point as it existed in 1869-70 by a broken line, which is further east than the lines shown by the survey of 1866. This chart shows also the position of Hopkins' Island as it existed in 1870, and its connection with Willow Point, according to the survey which sectionized Hopkins' Island as a part of Louisiana, as shown by Exhibit BB.

Q. Explain what you mean in connecting Hopkins' Island with Willow Point.

[fol. 200] A. What I mean by its connection with Willow Point is the distances and direction from a given point on the Louisiana side of the original survey on the Louisiana side with Hopkins' Island in order to locate it in its proper position to the Louisiana land survey. This chart shows the Mississippi shore line to be about one mile east of where it was in 1823, and of that part of Tullos Island which lay in Sections 20, 29 and 30, had crept into the river, and only a part of that which lay in section- 21 and 28 existed at that time. In 1870, at the time Hopkins Island was sectionized as a part of Louisiana, the main shore line opposite Hopkins Island was about 3,000 feet further inland than it was at the time of the Commission's survey of 1882, and a channel of the Mississsippi River in 1870, passed between Hopkins' Island and the main shore, as it existed in 1870, as is shown by the Government land survey chart of Hopkins' Island, marked Exhibit BB. After 1870 the river in the bend northeast of Willow Point began to move in a southwesterly direction and built out the Mississippi shore a distance of about 3,000 feet, so that in 1882 the Mississippi shore line of the river was along what had been the eastern boundary of Hopkins Island, and the channel of the river, at that date, 1882, was over the position that had been occupied by Hopkins' Island in 1870, having destroyed all of the island except a very small part of the southwestern extremity of the same.

[fol. 201] Exhibit I shows the position of the two banks of the Mississippi River as they existed according to the survey of the Mississippi River Commission made in 1894. This chart shows a very considerable change in the position of the river from that which it occupied in 1882, the river along the north side of Willow Point having moved southward by caving, about one mile, and having extended east about one half to northeast about one mile. At this time the Mississippi shore had receded eastward until all of Tullos Island had disappeared, and the shore line was about one quarter of a mile east of the east shore of Tullos' Island—of where Tullos' Island or Island No. 98 had been.

Exhibit J is a blue print showing—a blue print chart showing the position of the Mississippi River according

to the Mississippi River Commission's survey and charts for 1913. This chart shows that the Mississippi River had caved along the Louisiana shore on the north side of Willow Point and west of there about one and a half miles. This chart shows that Albemarle Bend had swung east and northeast by caving until all of Sections 18, 17, 16, about one half of 8, and all, except a strip on the north part, of 9; a northeast by caving until all of Section- 18, 17, 16, about one fourth of 27; all except a corner of 28; a part of 33; all of 31, and a greater part of 32 had caved into the river, and the Mississippi shore line at that time was about one mile east, in fact, about a mile and a quarter east of the eastern [fol. 202] boundary of the position formerly occupied by Tullos Island. This chart also shows a cut off across the neck of land between what had been called Newman tow head and the original Willow Point. This cut off began during the flood of 1912 and was enlarged during the flood of 1913 so that the greater part of the flow of the Mississippi River went that way during that year. Following the cut off the upper end of the old bend known as Albemarle Bend, began to fill up by deposits and in two or three years it had filled to such an extent that there was no flow around the bend except during extremely high water. Since 1913 the cut off has enlarged towards the east, showing a tendency to build out the stub of the bar lying east of Willow Point, and to cave away towards the eastward, what is known as Newman's tow head.

Q. At the time of the cut off in 1912, and just before the cut off of 1912, do you know on which side of the river the current was around Albermarle Bend on the east of what is now Newman's tow head?

A. Yes, sir; prior to the cut off of 1912 and 1913 the channel of the river was around the bend, known as Albemarle Bend, and the caving away of the Mississippi shore was very rapid. The caving, in fact, had been very rapid from the time of the 1882 survey by the Commission up to the time the cut off was made. It was known as one of the most rapidly caving bends in the lower Mississippi River. Levee [fol. 203] lines built in Mississippi to the eastward of Albemarle Bend would be in jeapordy within two or three years after they were constructed, and one retirement of the levee after another occurred until it became a burden to raise

funds to keep the levee back from the caving banks. That condition had continued until about 1909 when the Bend was so long and so deep that to build a new levee would require considerable miles and the cost would be so great that the Levee Board hardly felt able within the time limits and the revenues to build that levee in one season. It was evident that it had to be built within twelve months or the river would get the levee that then existed and the whole country would be open to the flood during that year. I had a very complete survey made of the situation in the Mississippi Levee District. That was the last year I was chief engineer of that district—in which I showed the probable location of the only feasible levee that could be built, and I prepared a map showing the progressive caving, and that even if the levee was built, the rate of caving that had been going on, if it continued, would soon reach that levee and it would be lost—a lost investment. I then concluded the only way to safeguard the country was to revet the Mississippi bank and prevent any further recession by caving. There was no possible way, no equipment and no trained forces for that revetment except such as the Mississippi River Commission [fol. 204] had. So I appeared before the Mississippi River Commission and laid before them a chart showing the heavy caving,the rapidity with which it was going on, and the utter impossibility or more than tempor*a*rizing, and that a very great cost, unless the bank was revetted and left intact. Well, the following year during the low water season of 1910, the Mississippi River Commission sent in several revetment forces and began the revetting of the banks at that point along the Mississippi shore. They did not complete the work, but the following low water season in 1911, they came very near completion of what then appeared to be necessary. The 1912 flood came and started the cut off, but there was still a defined flow, a part going through that incipient cut off of 1912 and a part around the Bend. So some repairs had to be made in 1912. In 1913 the cut off widened out until the current went that way, and there was no further attack along the Mississippi banks along the Bend and no further need for any further expenditures on revetment or on levees. The whole patient had been cured of the disease that had been attacking it for so long, and no further expenditures have been made in the way of building

new levees or revetment since the revetment was put in in '10, '11 and '12.

Q. Now, Captain, after the cut off, instead of the river continuing to flow around Albemarle Bend—however, first after the cut off, as I understand it, the river did continue to flow around Albemarle Bend and the old channel for awhile?

A. For awhile. There was a divided flow. Not all the [fol. 205] time. During high water there was a divided flow, but the bulk of it went through the short way, naturally so, because the slope across where the cut off was made was very much greater. The velocity was very much greater, and therefore the bulk of the water that went that way was greater than that which went around the bend.

Q. Now, while the water did continue to go around the bend did the accretions still continue to form around the bend?

A. The accretions began to form around the bend as soon as the current around the bend slowed up.

Q. To which side did most of those accretions form? To the Mississippi shore or to what was known as the Newman tow head?

A. That would take a cross section survey. No man could tell that in going on there and looking at it, and as to which side——

Q. (Interposing.) Well, you dont know?

A. No; I dont know. It is an important question in river improvement. All of the trouble had stopped and we did not investigate that at all. Sometimes I guess I could say that it forms more on one side than it does on the other.

Q. You did not go around Albemarle Bend after the cut off?

[fol. 206] A. Never since '13 have I been around the Bend. I saw it in '12 at both high and low water, when I was there, and in 1913 at both high and low water, but I have never been around that bend since 1913.

Q. Have you stated that Tullos Island, as it existed in 1882, entirely disappeared? If you have not I will ask you the question. Did it entirely disappear? I will ask you the direct question. Subsequent to 1882 did what is

or what was known as Tullos Island or Island No. 98, entirely disappear?

A. Yes, sir; it entirely disappeared by the caving, the Bend moving eastward until in 1913, when the survey of the Mississippi River Commission showed the main shore line to be about a mile and a quarter east of the eastern shore of Tullos Island as it had existed. Yes, sir; it taken Tullos Island, and came the full length of Tullos Island and still further eastward in Mississippi.

Q. Well then, you will not state positively that no part of Tullos Island, as shown here in 1882, is left?

A. Yes, sir; as this Bend progressively eat away the main shore and west eastward, the accretions on the west side followed it up continuously, survey after survey. Now some of the Commission's charts will show the shore lines on both sides every year. A multiplicity of them would be shown as the river progressed. But these lithographed [fol. 207] charts are not made every year. They are only made at long periods. They are very expensive to get up, and they show the river from long periods of say from ten to fifteen years apart. The original land surveys were made 91 degrees and 21 minutes west longitude, and this, as shown on the Mississippi River Commission chart was very near the eastern end of Willow Point at the time of the original Government survey in 1924. Now, that was about here (indicating). Here was Willow Point, (indicating). Now, at the time of the survey these same lines you see here—the fine lines, they are the same as these lines here. Now, as the Bend caved eastward into Mississippi the river maintained about the same width at all times. The accretions from the convex side formed just as the caving eat away the bank on the concave side. So between the date of the original Government survey and the Commission's survey of 1913, the river had moved eastward to about half way between longitude 91 and 91 degrees and 1 minute west longitude. Or, in other words, about three and a half minutes longitude to the east.

Q. As I understand, you state that at one period that you were asked about in regard to Hopkins Island, at the time some it remained—I will ask you whether or not Hopkins Island did not entirely disappear before the cut off of 1912?

A. The statement regarding Hopkins Island was in explanation of Exhibit H. In there I stated that at the time [fol. 208] of the Mississippi River Commission's survey of 1882 the channel of the river occupied the position which had been held by Hopkins Island and had destroyed all of the island except a small part of the southwestern extremity. Now, whether it had all been destroyed at a slightly previous or a slightly later date, there is no history, and it would be a mere opinion. I hardly think that that southwesterly extremity was destroyed because the river from 1882 on up to 1913 was moving eastward from that southwest extremity.

Q. Then I will ask you if a part of Hopkins Island was, or did remain, subsequent to 1882, was it or not attached to Willow Point bar?

By Mr. Butler: We object to that.

By Mr. Dale:

Q. Was it joined to it or not? The side of the river or not? The side of the channel, or where was it.

A. According to the chart of the survey of 1882 it was connected up with the Louisiana shore. The contours from this chart are from actual levels and show the elevation of the ground by a series of lines, each line the same elevation, with the figures and marks showing the elevation on out until you get to the river. Now, the bar, at low water—the lowest part of the bar shown there is seventy-five feet. That was seventy-five fet above zero, or what is [fol. 209] known as Memphis datum. Now, a datum plane is something fixed somewhere so all elevations are taken so much below or above it, and by the datum plane we are able to get the correct elevation as near as is humanly possible to do so of the continuous ground, the dry ground all the way out to the location of Hopkins Island in 1882 as the Point built out.

By the Commissioner: Gentlemen, the hour of adjournment having arrived we will now adjourn until 9 o'clock A. M. tomorrow morning.

Whereupon, an adjournment was here taken until 9 o'clock A. M. Wednesday morning, October 6, 1926.

10—9-O.

Wednesday morning, October 6, 1926, at 9 o'clock A. M., met pursuant to the above adjournment. All parties present as of yesterday, and the direct examination of the witness, Capt. Chas. H. West was resumed.

Capt. CHARLES H. WEST, recalled for further

Direct examination.

By Mr. Dale:

Q. I understood you to say yesterday that you had reduced this township map of Louisiana and Mississippi to the standard of the Mississippi River Commission map. I will ask you to explain what you meant by that?

A. That simply means that the township plats and the [fol. 210] Commission charts were given the same scale, so that a given measurement on one would be identical with the same measurement on the other. In other words, that a mile measured on one would be the same as a mile measured on the other.

Q. You don't mean that you reduced the size of the township map?

A. No; the term reduction to the same scale would mean that one might be enlarged or it might be reduced in order to get it to the same scale as the other.

Q. That is what I wanted to get clear. That is the way I understood it. I just wanted to get it clear. The witness is yours.

Cross-examination.

By Mr. Butler:

Q. Captain, I understand that there has been a number of surveys of the river in the vicinity of the point in question and to get it chronologically stated in the record, I want to ask you what was the first survey, and by what exhibit is it shown?

A. The first survey was the Government land surveys on the Mississippi side. That survey was made in 1823—the Government Land Survey.

By Mr. Dale:

Q. Wait a minute: Wasn't that shown by Exhibit N on yesterday?

A. No; here it is.

Q. The Mississippi side?

[fol. 211] A. That is shown on the chart M and also the Blue Print that you had yesterday which is marked "N." The next survey was that of the Government land survey on the Louisiana side, which was made in 1824.

By Mr. Butler:

Q. So that we may check these different surveys by the Exhibits which have been offered in evidence on yesterday will you please refer to the exhibits that were offered yesterday so that we may have access to the maps?

A. You were asking last about the Louisiana side?

Q. Yes, sir.

A. That is on the Chart marked Exhibit A, also Exhibit B and is also shown on Exhibit F.

Q. Now, when was the next survey, and by whom?

A. The next survey of which there is a record was very meager. That was a survey of the Louisiana shore in 1866, and there is no record here of any part of that survey except the Louisiana shore line,—just one bank—one shore line.

Q. Do you know where the record of that survey would be found?

A. You would find it in the Land Office. I don't know. The State Land Office in Louisiana. Also in the office of the State Board of Engineers.

Q. You have no record of that survey here?

A. No; I have nothing except the line that was platted [fol. 212] on this from the record. It is very meager—just one line.

Q. When was the next survey?

A. Now, I could explain why this line was run, if you care to have that in the record.

Q. I don't care anything about that.

A. It might give you some bearing on why such tremendous caving has occurred all through this reach here. It might be of interest to you. It don't have any bearing on the case.

Q. I don't care about that at this time. Now, when was the next survey after the survey of 1866?

A. The next survey was in 1869 and 1870, and is shown on the land survey Chart marked Exhibit BB. It is also shown on the chart marked Exhibit H. That was a survey of the island which had formed in the river known as Hopkins Island, and was a survey of the island as it existed in 1869 and 1870.

Q. And when was the next survey?

A. The next survey of which there was any showing here was a survey of the Mississippi river by the Mississippi River Commission made in 1882. The position of the river is shown on Chart marked Exhibit M, and also on Chart marked Exhibit H.

Q. Is it also shown on Exhibit C?

[fol. 213] A. Yes, sir.

Q. On Exhibit C?

A. Yes, sir; that is the same survey, but the map is charted on a different scale.

Q. And Exhibit D is it not?

A. Yes, sir, and Exhibit E.

Q. Now, you say that the next survey shown here was in 1882. Do you know of any survey between 1869-70 and 1882?

A. I know of none at all earlier than between—what did you say, '69?

Q. 1869-70 to '82?

A. I know of none at all. There possibly have been a survey made in the interim by some of the levee boards, but they are likely to have been a mere local shore line. No general survey of which there is a record that I know of. Nothing that I know of.

Q. Now, that survey of 1882 shown on this chart you have just named, is, as I understand it, a survey made by the Mississippi River Commission, and blue prints of that survey were made and later were printed on charts?

A. Yes, sir; the way those Mississippi River Commission charts are got up, they are made first on large working sheets and then they are reduced to a convenient scale. One [fol. 214] scale is shown on the chart marked Exhibit F is 1 to 20,000. The same survey is shown on a smaller scale chart marked Exhibit E. Now, when the survey has all

been platted up and is all checked out, and then put down on the paper, with all the topography shown, then, in order to get many copies, that is lithographed, and any number of sheets taken from the same stone. So they are all identical, and those stones are preserved until there is some later general survey made.

Q. Now, what does the survey of 1882 show with reference to the levels and the timber line and things of that kind?

A. The survey includes the shore lines,—two bank lines of the river. It includes the topography as it existed at the time of the survey out also about a mile from either side of the river, and it also shows the soundings across the river at intervals of some two or three hundred feet, up and down the river, and those soundings are taken at short intervals across the river, so that the drawings could be made showing the shape of the channel at the time the survey was made—cross sections of the channel. They also show elevations from the bank of the river out about a mile on either side at intervals of five feet. That is the fine lines you see on the face of the map over the land, and they have figures on them. Now then, there will be another fine line running parallel with that, varying in width, that will be [fol. 215] five feet higher, which from this line, if you will follow it around, will have the same identical elevation. Then the next one is five feet higher or lower, as the case may be. Here you have the same elevation as you follow the line. Those are what are called contours, and in studying the map you can get a pretty clear idea of the shape of the land, from a study of those contours. The base and datum plane used in this survey are what is known as the Memphis data, and the figures given on the face of the map except in soundings, mean so many feet above that datum plane. The particular datum plane that was used in this general survey of this part of the river was known as the Memphis datum. In the early days, or even as late as 1882, it was not known definitely what the mean sea level was, or the mean gulf level. So there were different parties put into the field, at different places. Up the river the parties there established their datum plane at Cairo, in which they estimated that sea level there—what the sea level there would be, and they called that the Cairo datum. Now, at Memphis they established there what they believed was

pretty close to the mean gulf level, and they called that the Memphis datum. Now, neither one was the gulf level. But after, the mean gulf level, through a series of observations with tidal guages, at two or three points on the gulf coast—one at East Bay, and one at Biloxi, those guages were observed every day through the low and high tides, and a rec-[fol. 216] ord kept—a clock work record—that ran over a reel. These records all there at Biloxi, of the tides, were kept daily, and relayed for a great many years, until finally they were able to say between the high and low—the mean high and the mean low—what the Mississippi Gulf level was. Now, after getting that, then the lines of the precise level having been corrected with the branch works all over the country, that country, they would know exactly what the Memphis datum meant as compared with the Gulf. Now then, in this case, on this chart, every figure of a con*y*our here differ from the mean Gulf by about six and three quarters feet; about 6.75. That is, say, within about 1/100 of a foot——

Q. High or low? Over or under?

A. It is under, because the figures here for Memphis datum reading 100, and if you want to reduce that to mean Gulf level you have to take six and three quarters from it.

Q. Add it wouldn't you?

A. No; you would add the mean Gulf to get Memphis, but if it was the Memphis datum here you would have to take 6.75 feet from this contour, and then you would know exactly what that spot on the map is above mean Gulf level.

Q. You are speaking of the survey of 1882?

A. Yes, sir.

Q. In addition to it showing what you have detailed, it shows the longitude and latitude of the territory in ques-[fol. 217] tion?

A. Yes, sir.

Q. And that is shown by lines extending across the chart or map?

A. North and south.

Q. And east and west?

A. Yes, sir.

Q. At what intervals are those shown?

A. They are at intervals of one minute latitude and one minute longitude, and each one is marked on the chart the degree and the minute of latitude and longitude.

Q. In addition to showing the latitude and longitude it shows here the established boundary like the county lines and parish lines, and things like that, does it not?

A. All that that survey was connected with at that time. It has all of that in there; yes, sir.

Q. And then it shows the character of timber growing—cottonwood or willow?

A. Yes, sir; the topography—just look at the timber and put that "cottonwood," that is willow, or that is oak or sycamore. You note the topography that goes with the surface part. That is noted within a certain area,—the character of the timber. That is shown on the map in a great many places, but not in all places. But in a great many. Now, on the map they are not all shown in evidence. [fol. 218] Here you will see hackberry right here. Here is cottonwood. It just gives the general character of the timber, and that is all they could do.

Q. That survey does show the character of the timber on Island 98, formerly known as Tullos Island, does it not, Capt. West?

A. The character of timber of what is left of Tullos Island on that map is some cottonwood and some hackberry and some gum. That is noted on the face of the chart.

Q. Now, Capt. West, what was the next survey of any kind of the territory in question after 1882?

A. After 1882 there were a number of surveys of the bank lines made. Whenever there was any decided caving the shore line would be run so they could plat the lines on the maps, the charts, and show the recession. But there was no general survey of the bank lines until 1894. The survey of 1894 did not take in the topography. It only took in the change in the position of the river alone, and that survey was platted on the charts of the 1882 survey. The chart shown as Exhibit C and Exhibit D, have the shore lines of 1894 platted over the chart, shown in red lines on the face of the 1882 chart.

Q. Now, was the survey made in 1894 similar in all respects to the survey of 1882 by the Mississippi River Commission, showing the topography and the levels, the latitude [fol. 219] and longitude, consisting of three sheets?

A. Small scale sheets?

Q. No, sir; large maps?

A. I know of none that were marked up. That survey was a general survey for a comparison of the river in '94 with what it had been in '82, and the lines of that survey were platted on the chart of 1882. It was something of a resurvey—a general resurvey with all of the details of the topography, as they were merely studying the changes that had taken place in the river itself, and that was platted on here in red lines so as to bring it out boldly.

Q. Then, you have no tracing or blue print of the Mississippi River Commission showing the topography and the details shown on the survey of 1882, as I understand. You simply have a tracing extended or projected on the chart of 1882 showing that?

A. Yes, sir; that is correct.

Q. Now, then, there was a survey of 1900, 1903 and 1907 also was there not—surveys during those dates?

A. There was survey of the bank lines in certain localities—not continuous—almost every year. You have no record before you of any of those annual surveys in this locality except the one of 1903. That merely shows the bank lines in red on the 1882 chart.

Q. Going back now to your exhibits, Exhibit E and Exhibit F are the same thing except on different scales, as [fol. 220] I understand you?

A. Yes, sir; they are the same survey, the Chart marked Exhibit E being on a scale of one inch to one mile. That is, one inch on the paper represents one mile on the ground. The Chart marked Exhibit F is on a scale of one to 20,000. That is, one inch on the map represents 20,000 inches on the ground.

Q. Now, your Exhibit F does not show—I mean Exhibit E does not show the details nor the levels and things of that kind as is shown on the large map, Chart Exhibit F, but they are made from the same survey, as I understand it?

A. The same survey. This is the survey of 1913.

Q. No; I am talking about now—'13—all right.

A. I have reference to the chart of the survey of 1913. The topography as shown on the two charts is the same except that on the smaller chart it does not always extend out quite so far perhaps as it does on the large scale chart. When that survey was made the instructions were to show the river, the cross sections of the river by soundings, and

the contour of the land above the water at five foot intervals out as far from the river as the levee lines on the two sides, and as far beyond the levee lines as they could get [fol. 221] the topography from the setting up of the instruments along the levee. That did not carry the topography as far away from the river as the survey of 1882. It was to save cost, feeling that they were not justified in going to the expense of getting anything beyond the levee except for perhaps 1,000 feet.

Q. But, in a general way the chart marked Exhibit F shows the same with reference to the survey of 1913 as the chart which you have heretofore testified shows with reference to the year of 1882, that is, the latitude, the longitude, topography and the levels and the things of that kind?

A. Yes, sir; the mean latitude and longitude here is shown on the chart as they were on the chart of 1882.

Q. Now, with reference to Exhibit G which was offered in connection with your testimony on yesterday, as I understood you, the data in that blue print was taken from the Mississippi survey of 1823, the Louisiana survey of 1824 and to the surveys of 1866, which is represented there?

A, Yes, sir.

Q. Is that right?

A. That is correct.

Q. That does?

A. Yes, sir.

[fol. 222] Q. Now, your Exhibit H to the bill of complaint about which you testified yesterday is made up from what data?

A. It is merely the township and section lines of the original land surveys shown in connection with the position of the river as it was in 1882. In other words, it is shown on the chart marked Exhibit H identically with the river as shown on the Mississippi River Commission chart of the survey of 1882.

Q. But, as I understand you, it shows the bank lines as shown on the Louisiana survey of 1866?

A. Yes, sir.

Q. And then it shows what was known as Hopkins' Island according to the survey of Louisiana in 1869 and 1970?

A. Yes, sir.

Q. You do not show the Louisiana side of 1824 on that map, do you?

A. No, sir; I did not, the shore line here having been fixed on the other chart and compared with it, I just wiped the line out.

Q. Nor does this show the shore line of Mississippi in 1823?

A. No.

Q. Or the boundary, extent and location of Tullos Island? [fol. 223] A. Only as it existed in 1882 because this data of the river was taken from the Commission's survey of 1882.

Q. With reference to your Exhibit I to the bill of complaint, about which you testified on yesterday, I will ask you where you got the data upon which you based that blue print?

A. That is the Mississippi River Commission plat. The positions of the township and sections in Mississippi and Louisiana remain the same on all of the exhibits from G to J inclusive. The only change between these four charts is in the position of the Mississippi river at different dates that are given. Otherwise, the charts are the same. It merely shows how the river changed with respect to townships.

Q. That does not quite answer my question. I want to know where you got the data for these drawings showing the river and the main channel?

A. From the Mississippi River Commission charts of the dates that are given.

Q. Now, what dates are they?

A. Well, the 1882 survey; the 1894 survey and the 1913 survey.

Q. Now, you show the bank lines in 1886?

A. Yes, sir.

Q. On the Louisiana side?

A. Yes, sir.

[fol. 224] Q. That data was gotten from the survey of Louisiana of 1866 about which you have referred to?

A. Yes, sir.

Q. By showing the bank line north of Willow Point on both sides of the river as of 1894, and you show the bank line all the way around down to the southern point or opposite Section 32 as of 1894?

A. Yes, sir.

Q. Now, is that map not compiled from the survey of 1894?

A. The shore line?

Q. Yes, sir; the shore line?

A. The shore line of the Mississippi river is merely the shore line as shown by the Mississippi River Commission's survey of 1894.

Q. And the section lines are simply the section lines that are indicated—simply the section lines and sections that are shown on the original surveys of the Mississippi and the Louisiana side?

A. Yes, sir.

Q. Now, I notice in these points projecting out here you have got the word, "accretion" written on there. Where did you get the data to write that in?

A. By following the charts, as the Mississippi shore receded by caving, and the Louisiana shore followed it up [fol. 225] by accretions, the river remained at approximately the same width to whatever position it had. For instance, you take the chart of 1882, of the Mississippi River Commission, shows the accretions out beyond the shore line, the Louisiana shore line of 1824, and beyond the shore line of the survey of 1866. Just a gradual building out. That is characteristic of the Mississippi through the lower valley, that it maintains about the same width all the way.

Q. As I understand you the word "accretion" is written in there as a result of your opinion from your study of these maps and charts about which you have testified, and not from any data shown on the government survey as accretions?

A. No, sir; they are shown on the Chart of 1882, following out on Willow Point as Albemarle Bend receded east, and they are shown the same on chart of 1813. Now, as I say, the survey of 1894 only shows the bank lines.

Q. Well, now, Captain, does not the chart of 1882, showing the point that you have got marked "accretions," as composing Island No. 98 in Section 21, and the land south of Section 16 in Section 21?

A. Let me see if I understand you.

Q. The question I asked you, you have the word "accretions," have you, marked in Section 21 and some in Section 17?

A. Yes, sir; the river having moved eastward.

[fol. 226] Q. Now, I want to ask you this. As I understood you you said you got that data from what was shown as accretions in the survey of 1882. I want to ask you if the chart of 1882 did not show that Section 17 was out on the bank; Section 21, or a part of it at least, was a part of Island No. 98, and Section 16; all the north half of the north part of Section 16 was out on the bank?

A. In what year?

Q. In 1882?

A. In 1882 a part of 21; a part of 28 were on the bank to the east of the Mississippi; yes, sir.

Q. And Section 16 and Section 17?

A. Nearly all of Section 16 and a little more than half of 17 were also on the bank east of the Mississippi.

Q. So, if I understand you, if those particular sections were projected or drawn on Exhibit 1, and if you used data of 1882, that would show that in 1882 that was land out on the bank?

A. Yes, sir.

Q. Now, going back to my question then in regard to these accretions put on there, that is your opinion of what happened between 1882 and 1894, and 1894 and 1913, is it not?

A. No; it is a little more than a mere opinion. The chart of 1882 shows accretions beyond the Louisiana bank line [fol. 227] of 1866, out for a considerable ways. The chart of 1913 shows accretions going even beyond the Louisiana shore line of 1894. Therefore, the space between those two periods is covered by the chart or the survey of 1913, which shows the accretions throughout. And again, they had to be accretions in order for the river to maintain approximately the same width throughout all the period of this moving eastward. The volume of the water carried by the river is such that it adjusts the channel to suit the load it has to carry of water. Then, my observations of that land have been quite carefully made since 1898. Prior to 1898 I have been closely observing what the river was doing as I was responsible all that period since '98 for safeguarding against disaster through changes in the river. Now, prior to 1898, and beginning about 1893, I was along that part of the river several times, and my observation was, during that period, the river maintained about a given width. Had

it been wide and shallow I should have observed it, and had it been wide and shallow the caving would have slowed up. But being deep and narrow between the bar line and the Mississippi shore was the cause of the rapid caving throughout. So it is not a mere opinion during that lapse of time between the shore lines of 1894 and 1903, or between 1892 and 1894.

Q. Now, you referred to a survey made in 1894. Will you give us a copy of that survey? The Mississippi River Commission has it, has it not?

[fol. 228] A. Only so far as it is shown on the chart of the survey of 1882 in red lines.

Q. Don't the Commission keep the data upon which that line was projected on the chart?

A. Oh yes, sir.

Q. The work sheet?

A. The field notes and the work sheets would be in the Secretary's office in St. Louis.

Q. In St. Louis?

A. Yes, sir.

Q. And that would be available, would it not, at the proper time?

A. Well, I could get a copy from the Secretary; yes, sir.

Q. Now, will you, Captain, get a copy, a certified copy of the survey of 1894 and file it as Exhibit One to your cross-examination?

By Mr. Dale: You have got a copy of that. I think we filed a copy of it here.

By Mr. Butler: Not a copy of that.

By the Witness:

A. The field notes of the survey are on file in the office of the Secretary. Of course, he would not give you the [fol. 229] original field notes, for then he would lose the base. But they would merely enable you to plot these same lines that he has there. That is the only record that is in shape to be seen that the secretary has—the plat in red lines on the face of the old chart.

By Mr. Butler:

Q. Captain, will you ascertain if there is not a blue print or a drawing showing in detail the survey of 1894, or in

detail of some character of the survey of 1894, relating to the survey of 1894, as is shown in the survey of 1882, and if so, will you file that as an exhibit?

A. Do you mean with the same data here?

Q. Yes, sir; file it as Exhibit No. 1 to your cross-examination?

A. Yes, sir; I will write to the secretary for that but I am not sure that a chart of that kind exists. That's a mere platting of the 1882 charts and does not change the position of the shore line. They did not go into the question of taking a detailed topography. They were only trying to study the change in the river itself.

Q. Now, this exhibit that I have been asking you about, Exhibit I, is a drawing that you got up for the purpose of being annexed to the original bill in this case, as I understand it, and is an exhibit to the original bill?

A. Yes, sir; the plat merely shows the position of the river [fol. 230] with respect to the land lines in the year 1894.

Q. Now, with reference to Exhibit J to the bill of complaint about which you testified yesterday, from what source was the data shown on that exhibit taken?

A. That was the position of the Mississippi river according to the survey of 1913 with respect to the township and section lines on the two sides of the river.

Q. And it shows the bank lines on the Louisiana side in 1866?

A. In 1866 and 1913 as they existed after the cut off had occurred.

Q. Now, what charts were used to put this data on the map? That is what I am trying to get at. I might not make myself clear.

A. How's that?

Q. What charts were used to put this data on this map?

A. The position of the river there is the same as is shown on the Mississippi River Commission's survey of 1913, as shown on Exhibit F.

Q. In other words, you used Exhibit F for the data from which to make your Exhibit J?

A. Yes, sir; so far as the river is concerned.

Q. So far as the river is concerned.

A. That is correct.

Q. I want to ask you, Captain, if you have here the [fol. 231] tracings of your maps, 1, 2, 3 and 4 from which the blue prints were made?

A. That would be what exhibits now?

Q. Your msps, 1, 2, 3 and 4. You have filed to the original bill of complaint blue prints, one of which is marked Exhibit G, one H, one I, and one J. In other words, four blue prints. I want to ask you if you have the original tracings or drawings from which those blue prints were made—have you them here?

A. The work was first done upon tracing paper or tracing cloth and then copies in the form of blue prints were taken from those tracings. The tracings from which the blue prints were made I have.

Q. You have them here?

A. No, sir; I have not them here.

Q. Will you file those tracings as Exhibits 2, 3, 4 and 5 to your cross-examination in this case?

A. Yes, sir; I will. You must not lose my original plates, however, for if you do there can be no more blue prints made. It is not customary to give up the tracings, but that will be done.

Q. We would like to have them.

A. Yes, sir; where will I send them.

Q. We would be perfectly willing to stipulate that as soon as this case is finished that the original tracings may be [fol. 232] withdrawn and returned to Capt. West.

A. Yes, sir; but let me understand where you want me to send them.

Q. Send them to the Commissioner, Hon. Jack Thompson.

A. Well, let me mark that down.

By the Commissioner: Why not send them to the stenographer, as I want him to keep these exhibits.

By Mr. Butler: Very well, Captain, send them to the stenographer.

A. All right.

Note by the Reporter.—Exhibits sent in by the witness and filed October 18, 1926.

Q. Now, Captain, I want to ask you one other question about this Exhibit M offered in evidence yesterday. As I understand that, that was a survey of 1879-80, which is known in the record as the survey of 1882?

A. Yes, sir; it is known in this record as the survey of 1882 because it was in 1882 when the survey covered this particular territory.

Q. But the survey designated in your chart Exhibit M is the same survey, or known in the record or referred to as the Mississippi survey of 1882 by the Mississippi River Commission?

[fol. 233] A. Yes, sir.

Q. And while it shows upon its face it was the survey of 1879-80, that was when the survey of that section began and not when it was made at this particular place?

A. No; the dates there, "Made in 1879-80," was when the general survey began, but it was not completed for two or three years later.

Q. Yes, sir; that is what I am asking you.

A. Yes, sir.

Q. And this particular part of the river in question was surveyed in 1882?

A. In 1882.

Q. And so therefore, that survey is known in the record here as the survey of 1882?

A. Yes, sir; the dates, 1882, are shown on the face of the chart. For instance, this part of the survey out here was made on November 9, 1882. Just above there you will see November 8th. So there are two dates right there. They quit there on the night of the 8th of November and began there on the next morning. You will find those dates on there throughout the entire reach of the river, some running back to '79 in the upper reaches.

Q. As I understand you, your chart 17, Exhibit C and D [fol. 234] is shown in your Exhibit N on a very much enlarged scale and known by the Government Number as Sheets 45 and 46?

A. Yes, sir.

Q. Then you have pasted sheet 45 covering one section of the river to sheet 46 covering the adjoining section of the river together, and projected upon that the section, township and range lines?

A. Yes, sir; the Sheet 45, however, covers all of the territory in question. Sheet No. 46 is merely added there for information as to the radical changes that had taken place in the river to the south of the territory in question.

Q. It does not cover quite all of it, does it? Is not there where you pasted it together? Right there.

A. Yes, sir; that is right.

Q. This is Sheet 45, and it comes down here to the north end of Island 98? Do you see here, right there?

A. Yes, sir; the two sheets are put together so that you will have the whole thing before you, you understand, instead of having to try to adjust them on a table. They are put together just as one would have run into the other had both sheets been made on one piece of paper. They are adjusted by latitude and longitude.

Q. Both sections of that chart show the latitude and longitude?

A. Yes, sir.

[fol. 235] By Mr. Butler: That is all that I desire to ask Capt. West at this time. We want to reserve the right to recall him for further examination after these exhibits are filed.

A. Do you mean at some later date?

Q. Yes, sir.

A. But you are through with me at this present hearing?

Q. Yes, sir; for the present, Captain, we are through with the cross-examination, but later on, you understand, we may desire to recall you for further cross-examination.

A. I was trying to get information in regard to the matter so that I might get off by twelve o'clock.

(Witness excused.)

At this point a recess is taken subject to further notice, upon agreement of parties.

[fols. 236-238] IN THE SUPREME COURT OF THE UNITED STATES

VOLUME TWO, BEING TRANSCRIPT OF TESTIMONY OFFERED AND INTRODUCED ON BEHALF OF THE DEFENDANT, DECEMBER 4TH AND 5TH, 1926.

Be it remembered that on, to wit, December 4th, 1926, pursuant to notice by the Commissioner, Hon. Jack Thompson, the hearing of testimony in the above styled and numbered cause was resumed, after adjournment had on the 6th day of December, 1926. Said hearing and proceedings were had and held at Jackson, Mississippi, in the court room of the county court house of Hinds county, Mississippi, and all parties present as heretofore.

[fol. 239] By the Commissioner: As I recall, when we adjourned this hearing a short time ago counsel for the complainant announced that they had not rested, but would probably desire to introduce some more testimony. Have you any further testimony, gentlemen?

By Mr. Brandon: No, sir; not at this time. But complainant reserves the right to introduce further testimony.

OFFERS IN EVIDENCE

Whereupon, the defendant offered and introduced the following testimony, to wit:

By Mr. Creekmore: The State of Mississippi first offers a certified copy of the Land Assessment Roll of Issequena county, Mississippi, for the year 1848, covering the assessment of Sections 15, 16, 17, 18, 20, 21, 28, 29, 30, 31 and 32 of Township 9, Range 8 West, and Sections 36 of Township 9, Range 9 West, it being page 1 of the certified copy of or given by F. Birdsong, Chancery Clerk of Issequena county, under date of October 27, 1926.

We next offer page 2 of the same certified copy, which is the assessment roll of the same lands for the year 1850.

[fol. 240] We next offier page 3 of the same certified copy, which is the assessment roll of the same lands for the year 1853.

We next offer page 4 of the same certified copy, which is the assessment roll of the same lands for the year 1854.

We next offer page 5 of the same certified copy, which is the assessment roll of the same lands for the year 1861.

We next offer page 6 of the same certified copy, which is the assessment roll of the same lands for the year 1866.

We next offer page 7 of the same record or certified copy, which is the assessment roll of the same lands for the year 1870.

We next offer page 8 of the same certified copy, which is the assessment roll of the same lands for the year 1871.

We next offer page 9 of the same certified copy, which is the assessment roll of the same lands for the year 1875.

We next offer page 10 of the same record or certified [fol. 241] copy, which is the assessment roll of the same lands for the year 1879.

We next offer page 11 of the same certified copy, which is the assessment roll of the same lands for the year 1830.

We next offer page 12 of the same certified copy, which is the assessment roll of the same lands for the year 1884.

We next offer page 13 of the same certified copy, which is the assessment roll of the same lands for the year 1887.

We next offer page 14 of the same certified copy, which is the assessment roll of the same lands for the year 1887-8, the record not being clear as to the year.

We next offer page 15 of the same certified copy, which is the assessment roll of the same lands for the year 1889.

We next offer page 16 of the same certified copy, which is the assessment roll of the same lands for the year 1892, there appearing on the roll Island 98, not assigned to any section.

[fol. 242] We next offer page 17 of the same certified copy, which is the assessment roll of the same lands for the year 1896, showing that Island No. 98 was not assigned to any section.

We next offer page 18 of the same certified copy, which is the assessment rolls for the same lands for the year 1898, and showing that Island 98 was not assigned to any section.

We next offer page 19 of the same certified copy, which is the assessment roll of the same lands for the year 1900, Island No. 98 not appearing on this roll as Island 98, meaning there being no specific mention of Island 98.

We next offer page 20 of the same certified copy, which is the assessment roll of the same lands for the year 1902.

We next offer page 21 of the same certified copy, which is the assessment roll of the same lands for the year 1906.

We next offer page 22 of the same certified copy, which is the assessment roll of the same lands for the year 1909.

[fol. 243] We next offer page 23 of the same record, which is the assessment roll of the same lands for the year 1911.

We next offer page 24 of the same certified copy, which is the assessment roll of the same lands for the year 1913 and 1914.

We next offer page 25 of the same certified record, which is the assessment roll of the same lands for the year 1915 and 1916.

We next offer page 26 of the same certified copy, which is the assessment roll of the same lands for the year 1917 and 1918.

We next offer page 27 of the same certified copy, which is the assessment roll of the same lands for the years 1919 and 1920.

We next offer page 28 of the same certified copy, which is the assessment roll of the same lands for the year 1921 and 1922.

We next offer page 29 of the same certified copy, which is the assessment roll of the same lands for the year 1923 and 1924.

[fol. 244] We next offer page 30 of the same certified copy, which is the assessment roll of the same lands for the years 1925 and 1926.

We next offer page 31 of the same certified copy, which is the assessment roll of the same lands for the year 1925 and 1926, including the certificate of the chancery clerk, covering pages 1 to 31, page 31 showing the assessment of the same lands for the year 1926-27, and we will now ask the stenographer to mark the document as Defendant's Exhibit A, and it is submitted herewith.

We have only one copy of this exhibit at the present time, but we will, as soon as possible, furnish the counsel for complainant a copy thereof.

We next offer a certified copy, under the hand and seal of F. Birdsong, chancery clerk of Issequena county, Mississippi, of the record of sales to the State for taxes of Sections

15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31 and 32, of Township 9, Range 8, East, and Section 36, Township 9, Range 9 West, and parts of them, for the years 1869 to 1926 inclusive, as shown by the records of lands sold to the State for delinquent taxes to Issequena county, Mississippi, and ask that such document be marked Exhibit B to the testimony of the defendant.

Document handed to the stenographer and marked Ex-
[fol. 245] hibit B to the testimony of the defendant.

We next offer a copy, certified under the hand and seal of F. Birdsong, chancery clerk of Issequena county, Mississippi, Order on Petition of J. M. Chilton, Lessee, praying for reduction of assessment of lands in Section 16, township 9, range 8 west, which order was entered by the Board of Supervisors at the August meeting, 1890, as shown by minute book E at page 608, and we ask that this certified copy be marked Exhibit C to the testimony of the defendant.

Document handed to the stenographer, and marked Exhibit C to the testimony of the defendant.

We next offer copy of the original entry of lands in Issequena county covering sections 11, 16, 17, 18, 20, 21, 28, 29, 30, 31, 32, of Township 9, North, Range 8 west; and all Section 36, Township 9, North, range 9 west, over the hand and seal of F. Birdsong, Chancery Clerk of Isssequena county, Mississippi, and ask that the same be marked Exhibit D to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit D to the testimony of the defendant.

We now offer certified copy of Sectional Index of Issequena county, Mississippi, covering transfers of Sections 15, 16, 17, 18, 20, 21, 28, 29, 30 31 and 32 of Township [fol. 246] 9 North, Range 8 West, and Section 36, Township 9, North Range 9 west, and ask that the same be marked Exhibit E to the defendant's testimony. But the defendant requests permission to retain this for the purpose of sending it to the chancery clerk of Issequena county for certification, and to be returned to the stenographer to be filed as an exhibit in this case, by inadvertence the same not being certified to by the chancery clerk of Issequena county, Mississippi.

By Mr. Dale: This document is objected to by the complainant for the reason that it is not the best evidence of

the transfers recited therein, as the original deeds, or certified copies of the original deeds would be the best evidence.

By the Commissioner: Let it be admitted and marked as Exhibit E to the testimony of the defendant, and the stenographer will mark that ruling *is* reserved.

By Mr. Creekmore: We next offer a certified copy, under the signature and seal of George F. Blackburn, Clerk of the Court and Ex-officio Recorder of East Carroll Parish, Louisiana, being page 1 of Book of Entry of East Carroll Parish, Louisiana, covering Sections 1, 2, 3, 4, 5, 6, 7, 8 and [fol. 247] 9 of Township 19, North, Range 14 East, and ask that the same be marked Exhibit F to the testimony of the defendant.

By Mr. Dale: Complainant objects to said document for the reason that it does not show that it is the original book of Land Entries filed in this office.

By the Commissioner: Let it be admitted for the present, and the ruling reserved.

Document handed to the stenographer and marked Exhibit F to the testimony of the defendant.

By Mr. Creekmore: We now offer a certified copy of the Assessment Rolls for East Carroll Parish, Louisiana, for the year 1876, showing assessment against Mrs. Anna E. Newman, Administratrix, Willow Point, covering the East half of Fractional Section 2, all fractional sections 3, 4, 5 and 6, Township 19, Range 14. Also 40 acres of Section 55, Township 19, Range 13, showing the number of acres to be 719, and ask that the same be marked Exhibit G to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit G to the testimony of the defendant.

[fol. 248] We now offer a certified copy of the assessment roll of East Carroll Parish, Louisiana, showing the assessment of Willow Point Plantation from the year 1880 to 1889, and ask that the same be marked Exhibit H to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit H to the testimony of the defendant.

We now offer a certified copy of the assessment rolls of East Carroll Parish, Louisiana, showing the assessment of

Willow Point Plantation from the year 1899 to 1926, and ask that the same be marked Exhibit I to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit I to the testimony of the defendant.

We now offer a certified copy of a deed recorded in Notarial Book Q, Folio 441-2, of the Records of East Carroll Parish, Louisiana, from Anna E. Newman to Walter A. Newman, dated the 26th day of October, 1882, and ask that the same be marked Exhibit J to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit J to the testimony of the defendant.

We now offer a certified copy of tax deed recorded in Notarial Book T, folio page 554, et seq., from J. W. Dunn, [fol. 249] sheriff and tax collector, to J. S. Milliken, bearing date May 12th, 1894, and ask that it be marked Exhibit K to the testimony of the defendant.

Document handed to the stenographer, and marked Exhibit K to the testimony of the defendant.

We now offer a certified copy of a deed from J. S. Milliken to J. A. Craig, recorded in Notarial Book U, page 55 of the records of East Carroll Parish, Louisiana, and bearing date of May 6th, 1895, and ask that the same be marked Exhibit L to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit L to the testimony of the defendant.

We now offer in evidence a certified copy of a tax deed from J. W. Dunn, sheriff and tax collector, to J. H. Gilfoil, Jr., to J. M. Hamley, recorded in Notarial Book X at page 203, of the records of East Carroll Parish, Louisiana, and bearing date of the 30th day of June, 1908, and ask that the same be marked Exhibit M to the testimony of the defendant.

Document handed to the stenographer, marked Exhibit M to the testimony of the defendant.

We now offer in evidence on behalf of the defendant a certified copy of power of attorney and deed from George

[fol. 250] I. Newman, Ernest Newman, Mrs. Florence B. Newman, and executrix of the minors, Clarence and Ed F. Newman, to Rufus F. Learned and Andrew B. Learned, recorded in Conveyance Record Book Y at page 155 et seq., of the records of East Carroll Parish, Louisiana, and bearing date of March 26, 1912, marked Exhibit N, defendant.

Recess until 2 o'clock P. M.

At 2 o'clock P. M. met pursuant to the above adjournment, and the introduction of testimony for and on behalf of the defendant was resumed.

All parties present as of this morning.

[fol. 251] Capt. H. M. Marshall, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Henry:

Q. State your name to the jury, Captain?

A. Horace M. Marshall.

Q. Where do you live, please sir?

A. Vicksburg, Mississippi.

Q. How long have you lived there?

A. Seventy-two years.

Q. Capt. Marshall, are you a graduate of any college, institution or university?

A. Yes, sir; I graduated in 1877 at the University of Virginia as civil engineer.

Q. How long have you been practicing the profession of civil engineer?

A. Practically ever since I graduated with the exception of four years when I managed a plantation from 1879 till 1882 inclusive.

Q. Where has your work been, your general work, since that time, Captain? On the Mississippi river, or where?

A. Mostly on the Mississippi river and tributaries of the Mississippi river in the employ of the United States Government, forty years, lacking twelve days.

[fol. 252] Q. During your employment with the United States Government, your entire time, with the exception of a short while on the Red River in Louisiana, has been at Vicksburg, has it not?

A. Yes, sir; at Vicksburg and the lower Mississippi delta.

Q. In your work as civil engineer with the Government tell the court whether or not it required you to familiarize yourself with maps, drawings and tracts, and the making of those, or having them made under your supervision?

A. Yes, sir; that was my job mostly—surveys and maps.

Q. This is a law suit between the State of Louisiana and the State of Mississippi, as is set out in the bill which has been filed by the State of Louisiana, which questions the title to a considerable number of acres of land. Have you discussed this law suit with the lawyers of the State of Mississippi and do you feel that you are competent to tell them what you have discovered in your investigations of it, Captain Marshall?

A. Yes, sir; if I understand you.

Q. I say, you have discussed it with the lawyers?

A. Oh, yes, sir.

Q. In the bill of complaint which was filed by the State of Louisiana, paragraph 3 states in effect that the large tract of land in controversy, fronting what is known as [fol. 253] Willow Point and adjacent property—where is Willow Point as shown on the map?

A. In the southeast corner of East Carroll Parish, Louisiana.

Q. And what relation has that to the county in Mississippi?

A. It is opposite the southwest corner of Issequena county, Mississippi.

Q. Of Issequena or Warren?

A. Issequena. It is the northwest corner of Warren county, Mississippi.

Q. That is it. You know we get confounded now and then. Can you show by the maps of Louisiana and Mississippi where the lines would coincide and meet in the river?

A. The township maps on two sides of the river will show the land in the State of Louisiana and in the State of Mississippi opposite each other.

Q. You have examined them have you not?

A. Yes, sir.

Q. This map I have handed you?

A. Yes, sir.

Q. I will ask you to please present that map and let it be marked Exhibit No. 1 to your testimony.

A. Exhibit No. 1 seems to be "Louisiana Exhibit A."

Q. Go ahead?

[fol. 254] A. Exhibit No. 1 or Louisiana Exhibit A shows Tullos Island in Mississippi, Township 19, Range 13, and 14 East in Louisiana is Exhibit No. 2 to complainant's testimony. I offer this as Exhibit No. 1 and Exhibit 2 Township plat in Mississippi and Louisiana, marked Exhibits Nos. 1 and 2, Marshall.

Q. How does the Mississippi river appear as shown on the township map in Louisiana and township map of Mississippi—what does it show?

By Mr. Dale: That is objected to by the complainant. The map is the best evidence as to what it shows.

By Mr. Henry:

Q. All right, tell what they show?

A. The township plat of Mississippi shows the bank line in Mississippi as run out at the time of the survey. It shows the bank line in Mississippi as sketched on the township map. In Louisiana it is just vice versa.

Q. In other words you mean that it does not show the same thing?

A. The bank line in Louisiana shown on the Mississippi township plat is not the same as the bank line in Louisiana shown on the township plat for Louisiana. The bank line in Mississippi shown on the township plat is not the same as the bank line of Mississippi shown on the township plat in [fol. 255] Louisiana. In other words, the rover is not the same as shown on the two maps.

Q. Under paragraph 4 of the complainant's bill the statement is made that "The land on the Mississippi river in the state of Mississippi opposite the Willow Point," and so forth and so on, "gradually wore away by errosions, caved into the Mississippi river and disappeared, while the shore of the Mississippi river on the Louisiana side at Willow

Point and adjacent property was gradually extended eastward and in an easterly direction by accretions formed successively and imperceptibly to the soil of said shore until it extended easterly to about the distance of approximately five miles from the original Louisiana shore." Is that a fact?

A. No.

Q. Please discuss that and show why it is not a fact?

A. The Mississippi survey was made in November, 1823. In Louisiana it was made in February and March, 1824. There was no other map—no other survey made of the shore line in the two states until 1882, when the Mississippi River Commission map was made.

Q. Where is that shown?

A. On Exhibit 3, Sheet 17 of the Mississippi River Commission. That shows that there was another island on the Mississippi side of the Mississippi river, Island No, 98, which is the same thing as Tullos Island, the island above [fol. 256] that, up stream, on the Mississippi shore.

Q. Was the island up above that, below the head of Island 98?

A. Yes, sir; below the upper end. They overlap. Those two islands overlap a little.

Q. What is the next map you have showing the change of the channel of the Mississippi river at or about Tullos Island or Island 98?

—. The next map is Exhibit 4 to my testimony, three blue prints sheets of surveys of the Mississippi river Commission, certified by the Secretary of War as being correct and official maps.

Q. And they have been marked as to your testimony how?

A. Exhibit 4. There are three sheets, A, B and C.

Q. State what Exhibit 4 shows according to your interpretation of the map?

By Mr. Dale: That is objected to on the ground that the maps are the best evidence and show for themselves.

By Mr. Henry:

Q. Please state what Exhibit 4 shows according to your interpretation of the map?

A. Exhibit 4-A, in the upper right hand corner, shows high ground, an elevation of 110, Memphis data. The line [fol. 257] running around the high ground shows the timber line. This high ground is on the western side or towards Louisiana of the Mississippi river. This 4-A is sheet No. 6 of the blue print issued by the Mississippi River Commission, certified by the Secretary of War. It is joined to Sheet 5½ of the same survey and blue print marked Exhibit 4-B. On that 4-B the high ground extending down the river with the timber line marked thereon. Sheet 5½ of 4-B is continued down the river on Sheet 5. This sheet shows a continuation of the high ground down the Mississippi river with the timberline marked thereon. On these three sheets elevations are written, referring to Memphis data. They give the heighth of the ground. The heighth of the ground, as I have stated, is 110 at the upper end, and——

Q. (Interposing.) The upper end of what?

A. The upper end of the island. And it runs off down to various numbers, 104, 108½, 107.4, 104.3, 109.5—various numbers. That is on the high ground.

Q. That is Tullos Island you are talking about?

A. Yes, sir. To the west and at the upper end of Tullos Island are various numbers, giving the elevations,—86.4, 86, 89, 85, 86, 90, which, it will be noticed, the 90 is 20 feet lower than the 110. On the lower end of Tullos Island, the figures written to the west of the Island, run 81, 85, 82, 84 and 95. On these three sheets the shore line of 1882 is [fol. 258] marked along the western limits or western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. To the east of this Island is shown the channel of the Mississippi river at the time this survey was made in 1894.

Q. Is there anything else shown on that map, Exhibit 4, A, B and C which would indicate the change of the main channel of the Mississippi river?

A. The fact that the island elevation is over 100, which is about the elevation of the bank line on the Mississippi shore. The location of the channel of the Mississippi River east of that high land shows that the river had gone around the upper end of the island and was flowing to the east of the island.

Q. Does that show that the island was washed away or still there?

A. The island could not have washed away.

By Mr. Dale: We object to that as a mere opinion of the witness, and as not shown by the survey referred to, and that he had no personal knowledge of the matter, and this objection is made generally to all similar testimony, and the maps themselves are the best evidence.

By Mr. Henry:

Q. I understood you to say that the bank line elevation and the island elevation is about the same?

[fol. 259] Q. As shown by that map?

A. Yes, sir.

By Mr. Butler:

Q. I want to know if your map, Exhibit 4, shows the same character of detail as the Mississippi River Commission map of 1882?

A. Yes, sir; the same detail. It is the shore line elevation of the bank, the timber line and the soundings in the river. The character of the survey is exactly identical as on the survey of 1882. That is the survey there of 1882 there.

Q. It is marked here Exhibit M to the testimony?

A. Yes, sir.

Q. And also sheet 45 and 46?

A. Yes, sir; they are two pasted together.

By Mr. Henry:

Q. I don't know whether you have stated it or not, but is there anything else shown on the map which would indicate the change of the main channel of the Mississippi River?

A. The fact that the island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. I can state of my own personal knowledge that in 1890, four years before the survey was made, that Island 98, or Tullos Island, the island above it, had not been washed away, but

was still in existence. Of course, everybody knows that [fol. 260] an island can not be washed away and then four years later be built back with big trees growing on it, as shown by this survey. There is another thing I want to show you. Up stream from this island shown on Exhibit 4-A, and westward to the Louisiana side, the elevations of the ground surface are 20 feet lower than the elevation of the island, that is, the ground west of the island is 20 feet lower than the surface of the island. This low ground to the west of the island is in the location of the Mississippi river in 1882, which shows that the Mississippi river had gone around the head of the island and over to the east, and a bar had formed from the Louisiana side over to the head of the island. If the island had washed away and the accretions made from the Louisiana shore, this low ground could not have occurred if the Mississippi river had gradually moved over towards the State of Mississippi, building an accretion on the Louisiana shore. That accretion would have been adjacent—would have been higher adjacent to the Louisiana shore, and lower as the accretions were formed from year to year towards the Mississippi shore.

By Mr. Dale: The complainant objects to the foregoing answer in its entirety, because it was not made in response to the question, but vice versa, was read from a carefully and previously prepared statement, which was made by the witness prior to his being introduced and put on the [fols. 261-270] witness stand.

By Mr. Henry:

Q. They object to this because you read from it. Tell the Court whether or not that is your declaration, and whether you made a preparation of the case in the office of the attorney, among the attorneys who represent the state of Mississippi?

A. Yes, sir; I had begun—I wrote it all out myself, and then, in consultation with the attorney representing the State of Mississippi, in Vicksburg, I dictated this statement, and it was taken down by the stenographer there.

Q. Is it correct?

A. It is correct exactly as I said it. I have gone over it and corrected it.

Q. Are you hard of hearing, Capt. Marshall?
A. Yes, sir; and it is a plumb nuisance.
Q. This statement is correct?
A. Yes, sir.
Q. Please state to the Court what you were doing up there when you personally observed that condition, and what you saw?

A. In 1890, during the high water I was in charge of the levees from R. E. Foster's place down to the end of the Mississippi River District at Brunswick. I rode the levee day and night, and stayed at different houses. In this immediate Vicinity I stayed with Jack Chilton and [fol. 271] his brother, John Chilton. One morning while there I went out with Jack Chilton to meet the mail boat, which came up the chute, on the eastern side of Tullos or Island 98, and landed against the levee and put off the mail for Jack Chilton. He was postmaster at Albemarle at that time. There was two islands, with the chute running down between the two. While we were there and the mail boat passing up the chute side, an Anchor Line boat passed down the main channel on the western side of both islands. There were trees growing on both the islands, large cottonwood and willow. There was a swift current flowing down between the two islands and a channel to the east of both islands. Without being able to say how wide it was, it was possibly 100 feet wide—enough for the mail boat. The mail boat was the Issequena—and it was wide enough for the mail boat Issequena to go up through that chute next to the main shore.

Q. Was the mail boat a light draft boat or a heavy boat—a big boat?

A. She was a large boat. As I said, it was in time of high water.

Q. So far as you know, and as you are advised, is Jack Chilton living or dead?

A. I think they are both dead—John and Jack Chilton are both dead.

[fol. 272] Q. The levees of which you had charge, tell the Court what county or counties those levees were in?

A. That was in the Lower Mississippi Levee District. That levee was under my charge, and was in Issequena

county. I will state that it was at Albemarle Landing, immediately adjacent to Tullos Island, or Island No. 98.

Q. All right. Go ahead?

A. I have prepared a tracing made from blue prints—from the three blue prints shown as 4-A, B and C, so as to put the river in that vicinity on one drawing and have marked the tracing Exhibit 4-A, B and C, on the lower right hand corner.

Q. All right, what does that show?

A. It shows in a clear way then what I have stated with regard to the blue prints. It is, as far as it goes, a fac simile copy of the lines and figures on those three sheets 4-A, B and C. On that tracing, which is on a scale of 1 to 10,000, the scale on which the Mississippi River Commission surveys are platted in the St. Louis office—on these tracings I have drawn the section lines in this vicinity, showing sections 16 and 17 and some of 20, 21 and 28, covering Tullos Island as Island 98 and the Mississippi adjacent shore. Also on that tracing I have marked two lines in blue pencil, along which I have written the north border of sheet No. 5 and the southeast border of sheet No. 6, so that these tracings may be fitted over the blue print sheets to [fol. 273] show that they identical.

Q. You say the blue print sheets are what?

A. They are 4-A, B and C.

Q. From that then what, if anything?

A. In order to reduce this survey sheet 4-A, B and C from the 1 to the 10,000 scale to the 1 to 20,000 scale, which is the scale on which the maps of the Mississippi River Commission are printed, I have prepared a tracing reduced to one half size, otherwise identical with the tracing of Exhibit 4-A, B and C. This second tracing is marked in the lower right hand corner, "Reduced from Exhibit 4-A, B and C."

Q. What does it show?

A. The same thing. It is a fac simile of the other tracing except as to size. It is one half the size.

Q. You will call that exhibit what?

A. I will call one Exhibit 4-D and one 4-E.

Q. Please refer to the blue print which is marked Exhibit I to the State of Louisiana, complainant, which is a map by Capt. C. H. West, and state what that shows?

A. The most striking thing on there is the word, "accretions," which is written on the bar, showing between the bar line of 1894 and the bank line of 1866.

Q. You have read Capt. West's testimony, have you?

A. Yes, sir; I read his testimony.

[fol. 274] Q. Tell the Court, if you can, where Capt. West got his data to draw this? This blue print?

A. Because it shows the Mississippi river in the location of 1894, as it states on its face, showing the Mississippi river bank in 1894. This Exhibit I to West's testimony is made from the Mississippi River Commission's survey of 1894 or from Sheet 17 of the Mississippi River Commission, one inch to the mile scale, with the red lines of 1894 superimposed on it.

Q. Superimposed on the 1883 map?

A. Yes, sir. That is shown, I think, on the 1883 map. The scale of Sheet 17 was one inch to the mile, and the scale of Exhibit I is 1 to 20,000, which is the scale of the Mississippi River Commission printed sheets.

Q. Judge Dale has just suggested to me that it was 1882 instead of 1883.

A. Sheet 17—let me explain. Those small sheets, one inch to the mile scale are made up from 1 to 20,000 sheet scale. The one there, 20,000 sheet scale, is from the actual survey in the field, and the dates on those sheets is given, the time of the survey. The smaller sheet, one inch to the mile, is made usually the next year. So that for 1882 the survey made equals 1 to 20,000, and the next year comes out the sheet 1 inch to the mile,—the following year. One was made in 1882 and the following one was made in 1883.

[fol. 275] By Mr. Butler:

Q. Is there anything in the Mississippi River Commission's Survey of 1894 that would justify designating this land on Exhibit I as accretions?

A. No. I have stated practically everything that was on the 1894 survey sheets, 4-A, B and C. I stated on there everything that is cognizant to this question, and there are no accretions marked there. I have studied them all, and there are no accretions marked there—bar line, timberline, high ground, low ground—nothing said about accretions.

By Mr. Henry:

Q. State whether or not the 1884 survey map of the Mississippi River Commission shows the island, and sheet No. 17 shows the upper part of Island No. 98 or Tullos Island with the island above on the west, the bar line of 1894 on the western shore?

A. Yes, sir; the bar line is on the western shore of the Mississippi river. I will state it the other way around. The river is the eastern end of the island.

Q. Where is the island shown?

A. The island is shown on the 1894 map which you have asked about.

Q. And you say that the only place that Capt. West could have gotten the blue print which he made was from the survey of 1894 and the survey of 1883?

[fol. 276] A. Yes, sir.

Q. Go ahead now, Captain Marshall?

A. On the western side of the channel of the Mississippi river marked on Exhibit I, "Mid river distance, Mississippi—Louisiana," at the spot where Capt. West wrote "accretions," appears the location of the low ground shown on sheets 4-A, B and C, which I have previously described.

Q. That is shown by placing your Exhibit 4-E over Exhibit I?

A. Yes, sir; with the section lines on 4-E fitting over the section lines on Exhibit I.

Q. Does any other drawing or map which you have seen, except this map, or No. 3 of C. H. West, lose sight of the Island?

A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A, B and C, the one inch to the mile, 17, Exhibit 3, those are the only maps that I know of, except the one issued with the superimposed lines on Sheet 17 showing the 1894 line, from which, I presume, Capt. West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off. The Sheet 17, 1 inch to the mile, with the superimposed red line of 1894, shows the lower part of the upper of the two islands, and the upper part or the lower of the two islands, or Tullos [fol. 277] Island, surrounded by the red line to the west of the Mississippi river.

By Mr. Butler:

Q. What is this paper here?

A. This is a blue print of the Mississippi River District map of Albemarle Bend, Levee Board, showing changes in the channel from 1882 to 1896. It comes out of Greenville, Mississippi, and is dated April 5, 1906, with the name of C. H. West, Chief Engineer, scale 1 to 20,000. Having read Capt. West's testimony, I will state that this is the blue print from the map that he prepared to show the caving that had taken place in Albemarle Bend. In his testimony he refers to this map.

By Mr. Butler: We offer Mississippi Levee District Map of Albemarle Bend, L-B 567-572, showing changes in the channel from 1882 to 1906, by C. H. West, Chief Engineer, dated at Greenville, Mississippi, April 5th, 1906, as Exhibit No. 5 to the testimony of this witness.

By Mr. Dale: It is objected to by complainant for the reason that the document offered is a blue print, and the loss of the original has not been shown; nor has it been shown that the original could not be produced, and it is not certified to.

[fol. 278] By the Commissioner: Let it be identified by the stenographer as Exhibit No. 5 to the testimony of this witness, and it will be admitted, for the present, subject to the objection of counsel for the complainant, to be passed on later.

By Mr. Butler:

Q. Go ahead and tell us about that map?

A. It shows, as it states on its face, the locations of the levee from time to time between 1882 and 1906.

Q. On the Mississippi side?

A. On the Mississippi side, in the Lower Mississippi Levee District, in the vicinity of Island No. 98. The date that each levee was built is written along the line showing the location of the levee when it was built.

Q. How are the levee lines represented as shown on that map?

A. White continuous lines drawn with irregular angles. The lines represent the actual location on the ground when shown on the map of this scale on that blue print, because of

the almost indecipherable figures I have written adjacent to each, here and here in red keel. I have not obliterated any of the original figures,—merely putting in some figures so as to make it more clearly readable. Even that does not make it as clear on the drawing as is desirable. Therefore, I made a tracing, a fac simile, from this blue print, with the same lines as shown on the blue print, and the same [fol. 279] numbers for the years written along the lines of the levee.

Q. Will you mark that tracing as Exhibit No. 5-A?

A. Yes, sir.

By Mr. Dale: We will withdraw our objection to the blue print, but complainant objects to the introduction of the Exhibit 5-A for the same reason which was made in the general objection previously, and to all similar testimony. Our objection also to Exhibit No. 5-A is that it only partially shows the facts.

By the Commissioner: Let the objection be noted and the exhibit will be admitted for the present, subject to the objection, and a ruling made later.

By Mr. Butler:

Q. Now, just go ahead and explain what Exhibit No. 5 and No. 5-A shows with reference to the caving and movement of the river?

A. From the dates shown of the location of the levee in 1882, with the numbers written along the line, in 1883 it shows what is called the run around of the levee, opposite where the chute passed on the north side of Island 98, showing that between 1882 and 1883 there had been caving on the main shore along the bank of the chute at the upper end of Island 98. That caving was necessarily due to the flow of the water down through that chute. The next year, 1883 and [fol. 280] 1884, a run-a-round was built on the Mississippi levees adjacent to the lower end of the chute, to the east of Island 98. It is marked 1883 and 1884. There it is on there. The next is a levee built in 1888 and 1889 on an extensive run-a-round, at the upper end of the island, adjacent west of Island 98, in the location of Duvall's landing. In 1889 a small run-a-round was built above Duvall's. In 1890 a run-a-round was built from the run-a-round of 1888

and 1889 down to the run a-round of 1883, showing that caving had progressed towards the northeast of Island 98 and the adjacent island, and that it continued as shown by the successive dates, 1894, 1895, 1893, 1895 and 1896 and 1897. There is another one here, 1892, running from the 1890 extention down to the middle of the 1883-1884 run-a-round. The location of all of these levees shows undoubtedly that the river had caved north and east of Island 98. From the location of the levees up to 1890 I have drawn the approximate location of the bank of 1894 on the Mississippi side, and following Capt. West's rule to allow the usual width of the river I have also drawn the line showing the west shore of the Mississippi River in this locality. That location of the river, to all appearances, coincides with the location of the 1894 shore lines, shown in red, superimposed on Sheet 17 of the Mississippi River Commission, which was offered [fol. 281] in evidence in this case on the complainant. This blue print, 5-A, states that it is made up, or rather it shows the shore line of 1882, and the Island 98 with the chutes to the east of those islands. When these tracing of these levee lines is superimposed, it shows superimposed on Exhibit 5, it shows that chute as it formerly was—which was formerly on the eastern side of Island 98, was within the bed of the river in 1896.

Q. And it shows, as I understand you, that the chute to the east of Island 98, in 1896, had come to the channel of the river?

Objected to as leading: ruling reserved.

A. The chute is within the lines of the river. The former chute is within the lines of the river in 1894. If I said 1896 anywhere it is off. You said 1896. All of this shows that the chute on the eastern side of Island 98 had simply been enlarged, and the islands were there in 1890, because I saw them, and the islands were there in 1896 by evidence of enlargement of those chutes.

Q. Does Island 98 appear on your Exhibit 5?

A. Yes, sir.

Q. On that map Island 98 is on the Louisiana or the western side of the channel of the river?

A. Yes, sir; the river had gone around, making over and over the same thing.

[fol. 282] Q. Capt. Marshall, I hand you some papers marked Exhibit- 6-A, B, C and D, and will ask you to tell me something in a general way, what they are, and I want to offer them in evidence.

A. They are certified copies of maps made by the Mississippi River Commission of 1883, sheet 17, 1882, sheet 45 and sheet 46, 1913, and 17 sheet 47. The last named three sheets are scaled 1 to 20,000, approximately three inches to the mile. In addition——

By Mr. Dale (interposing): Let me make an objection right there.

By Mr. Henry: Wait until he finishes his answer, Judge.

By Mr. Dale: Very well.

By Mr. Butler:

Q. What else, if anything, is there on those maps?

A. One moment, please. Give me A, B, C and D. Exhibit C is a letter from the Assistant Engineer stating where the section and range lines cross the levee in the vicinity of Albemarle. There is a tracing——

Q. (Interposing.) Have you superimposed any lines on those Mississippi River Commission maps?

A. Yes, sir; on this Mississippi River Commission sheets I have superimposed lines in red keel, showing the sections [fol. 283] with the various numbers written on them. The purpose of this letter, Exhibit 6-E, was to locate those section lines on the sheets from the surveys made by the Mississippi Levee District. Having the station numbers on the levees, I merely had to draw the section lines where they crossed the levees, and stated by the letter.

Q. That is all you desire to say about that, is it, Captain Marshall?

A. Yes, sir.

By Mr. Butler: We now offer in evidence these exhibits.

By Mr. Dale: Objected to by the complainant for the reason there are a lot of red lines imposed, as stated by the witness, on the Mississippi River Commission's survey, and they are not shown to be correct, and constitute an alteration of the map to that extent.

We object to the letter purporting to be from the Assistant Engineer of the Board of Mississippi Levee District to

the witness, as there is no proof of the signature of this gentleman as to its genuineness, and it is not sworn testimony, and complainant has had no opportunity of cross-examinaing the said engineer, and testimony by letter is incompetent and irrelevant.

By Mr. Butler:

[fol. 284] Q. Have you superimposed the section lines on the maps referred to in the same way that Capt. West superimposed them upon his Exhibit M?

A. The same way, and practically identically in the same location.

Q. Go ahead now and explain it.

By Mr. Dale: We make the further objection to the tracing marked Exhibit- 6-D to 6-E, as it is not made from an original survey; it is not certified to, or shown to be correct.

By the Commissioner: Let the objection of counsel be noted; that the ruling is reserved, to be passed on at a later time.

By Mr. Butler:

Q. Go ahead and make your explantion of those maps, Capt. Marshall?

A. The section lines in red, drawn or superimposed on Sheets 45 and 46 of the Mississippi River Commission, have been drawn off in the form of a tracing. The tracing fits the map and shows the shore line of 1882—the shore line of the Mississippi River—in 1882, along the island next above Tullos Island; the 1882 bar line on the Louisiana shore, and the mid-channel line in 1882 between Mississippi and Louisiana forming the boundary to the west of Island 98 and above it, and to the east of the bar line of [fol. 285] 1882, making the location. This tracing, when superimposed and placed over 47 of the 1913-15 survey, scale 1 to 20,000, with the section lines from the survey on one did coincide with the section line of the survey of the other date—of the later date, and shows the same boundary line just previously stated between the State- of Louisiana and Mississippi in 1882 was within the channel of the Mississippi river, as shown in 1913-15. Practically the center

line is co-incident. This means that the Mississippi River, in 1882, was in the same location as the cut-off shown in 1913 and '15; that the Mississippi river merely had gone back down the old channel which was shown still there twenty feet lower than the island at the upper end, and 25 or 30 feet lower than the island at the lower end in the 1894 survey on 4-A, B and C.

Q. Has this tracing been marked as an Exhibit?

A. No.

Q. I will ask you to offer as Exhibit 6-F to your testimony this tracing that you have just testified about?

A. Yes, sir.

Document handed to the stenographer and marked Exhibit 6-F to the testimony of this witness.

Q. Now, this tracing which you have offered as Exhibit 6-F to your testimony, simply reduces to one sheet the information shown on this Mississippi River chart as to the channel of the river and the location of the banks, and so forth?

[fol. 286] A. This tracing is made from the 1882 survey, but when it is placed on top of the 1913-15 survey with the sections coincident, shows that the channel of 1882 was in identically the same location as the channel in 1913-15.

Q. I now hand you Exhibits 7-A and 7-B. What are they, Capt. Marshall?

A. Those are Blue Prints of the sheets made by Capt. West, marked Map No. 4, which is 7-A, showing the Mississippi River, with the cut-off in 1912 and 1913.

Q. What is Exhibit 7-B?

A. The 7-B is Township 19, Range 8 west, Issequena county, Mississippi, showing the river bank in 1882.

Q. Made by Capt. West?

A. Yes, sir. Scale 1 to 20,000.

Q. And marked Map No. 2?

A. Yes, sir. Exhibit A Map No. 4, made by Capt. West, the same date, shows the river bank in 1913. I have here a tracing of these maps made by Capt. West that are identical.

Q. Marked Exhibits 3 and 5 to the cross-examination of Capt. West?

A. One is Exhibit 5 and the other is Exhibit 3. These last two are the tracings from which the blue prints were

made, that were sent to me by Capt. West. When placed one over the other so that the sections coincide, the mid-river distance on the Exhibit 3 is right down the middle [fol. 287] of the channel shown on Exhibit 5, confirming comparisons that I made on Sheet 45 and Sheet 46 of 1882 with Sheet 47 of 1913-15.

Q. If the river had gradually eaten away the Mississippi side, and had caused accretions to form from the Louisiana side across to the Mississippi side, is it probable that the river bed of 1813-15 would have been in the river bed of 1882?

A. Of course, everything is possible.

By Mr. Dale: Objected to by complainant as incompetent evidence, being purely and solely the opinion of the witness, without any reason for said opinion.

Ruling reserved by the Commissioner.

A. I have stated the facts as shown by the 1894 survey, with the old bed partly filled up with sand twenty to thirty feet lower than the top of the land on the island. I have shown that the channel filled up with sand was identically in the same location of the channel in 1882; and I now here show that the channel of 1882 is in identically the same location as the channel in 1913-15. Now, put the three together.

Q. Now, have you made that showing from the maps of the Government?

A. From the official maps of the Mississippi River Commission.

[fol. 288] Q. Will you give in detail your various positions with the United States Government; how long in each position, and where, and your duties in connection with those positions, and your other experience as a civil engineer?

A. I started out by saying that I graduated in 1877. I came back to Vicksburg and was employed on the survey of the Vicksburg harbor. The survey was made under employment of the City of Vicksburg, but it was made for the purpose of submitting to the United States Engineers with a view of restoring the harbor of the City of Vicksburg by diverting the Yazoo River down through Chickasaw Bayou, or otherwise.

Q. Tell how long you worked there.

A. Nothing was done because the Yazoo River entered the Mississippi River about five miles above Vicksburg, and from time immemorial the mouth of the Yazoo River had been stopped up, practically unnavigable in time of low water. The Board of Engineers decided that if the Mississippi River could not keep its own mouth open, it could not keep the canal open in front of Vicksburg. I then went over on railroad work. I was employed——

Q. (Interposing.) How long were you on the harbor work at Vicksburg?

A. That was only about nine months. That survey was only about nine months, and then I went off on other work. [fol. 289] I went on railroad work in Coajoma county and located fifty miles of the Yazoo & Mississippi Valley Railroad through Coahoma county from Carnes down to Bobo, and supervised the building of about half of that. I then went on the levees in the upper Mississippi Levee District, from Memphis down to Sunflower Landing. I was there about a year. Of course, these things are all approximate. I then went back to Vicksburg and was employed in the Vicksburg United States Engineer's office from September, 1884 until April, 1885. I next made a sectional index for all of the deeds in Warren county in the City of Vicksburg. That took me a year. I then went back on the levees in the Upper Mississippi Levee District in Tunica county and stayed there about a year. I then went over on the railroad and located a railroad from Memphis to Pine Bluff, in Arkansas. I then went down on the levees in Arkansas in Cluco county. I stayed there about a year, and then went back to Vicksburg and was employed in the United States Engineer's office in 1888. I was continually employed in the United States Engineer's office at Vicksburg from 1888 until 1924, when I was retired. While in the United States Engineer's office I had charge of the survey of the Yazoo River at the mouth, with a view to turn Yazoo in front of Vicksburg and restore the harbor, the same work virtually that I was first employed on in 1877. In the re- [fol. 290] port on that survey I stated that the Yazoo River entered the Mississippi River on the bar side, where the Mississippi continually made up the bar,—filled it up at every high water, and that when the Mississippi fell the Yazoo had to wash that sand away. The task was so great

that in the falling of the Yazoo river, by the time the sand was washed out the low water season was over. That it might have been no provocation in low water through the mouth of the Yazoo where it was proposed to bring the Yazoo River down in front of Vicksburg, the Yazoo would enter the Mississippi River on the channel side where the Mississippi did not make any deposit. All of the caving of the bank was carried from the channel side over to the bar side in the river, consequently the Yazoo River would not have to keep its mouth open. It would always stay open. That was adopted. The plans called for an expenditure of $1,200,000.00. The work was carried out within the estimate, the only work of a million dollars that ever was executed by the United States Government within the estimate. You have asked me to give a history of my life. I then went over on Red River and had charge of the surveys for the improvement of Red River from Fulton, Arkansas to the mouth. That extended over seven or eight years. I made plans for the improvement of Red River, for which no appropriation ever was made. The estimate was ten million dollars. I was then put in charge of the Oashita River to pull logs and dams from the river from [fol. 291] Camden to the mouth. I made a survey and made plans for the improvement of the river and went to Washington and appeared before the Rivers and Harbor Committee and explained the project. Money was appropriated. Locks have been built, and I am sorry to say they did not come within the estimate. After that I was in general charge of the snag boat, cleaning out the River Yazoo, the tributaries of the Yasoo, the Red River and its tributaries, and others, and in 1908, 9 and 10 I had charge of a repetition of the survey of the Red River. I think that is about enough.

Q. Did the duties of your employment with the Government require you to famili-rize yourself with the characteristics of the Mississippi river, and its trend, and so forth—the caving of its banks?

A. Yes, sir.

Q. State whether or not your work required you to do those things, and to what extent?

A. Yes, sir; my work on the rivers has been everything pertaining to the improvement of the rivers.

Q. And to the construction of levees?

A. Construction work, to the operation of all of the boats on the river.

By Mr. Butler: That is all. You may cross-examine the witness.

[fol. 292] By Mr. Dale: We do not care to ask Capt. Marshall any questions. He may stand aside.

(Cross-examination waived and witness excused.)

By Mr. Brandon: We desire that a note be made here that all exhibits put in by Capt. Marshall in his testimony, copies are to be furnished us by the defendant.

By Mr. Butler: Yes, sir; I understand that the State of Mississippi will undertake to furnish copies.

Recess until 9 o'clock A. M. December 4, 1926.

[fol. 293] Jackson, Miss., Dec. 4, 1926.

Met pursuant to adjournment at nine o'clock A. M. and all present as of yesterday. The defendant resumed the introduction of its proof.

OFFERS IN EVIDENCE

By Mr. Creekmore: The defendant offers in evidence a photostatic copy of a map of reconnaisance of the Mississippi River, made by Maj. Charles R. Suter, Corps of Engineers of the United States Army, made in accordance with the Act of Congress, approved June 23, 1874, and will ask that the same be marked Exhibit O to the testimony of the defendant.

By Mr. Dale: We object to this document for the reason that it is not certified to as a correct copy of any map in existence, and there is no proof of its correctness or accuracy; that the original from which the photostatic copy purports to have been made was not certified to.

By the Commissioner: Let it be marked and admitted subject to the objection made by counsel, and ruling reserved.

Document handed to the stenographer and marked Defendant's Exhibit O.

[fol. 294] By Mr. Creekmore: We now offer a photostatic copy of the survey of the Mississippi River made under the direction of the Mississippi River Commission, being Chart No. 45, and ask that it be marked as Defendant's Exhibit P.

By Mr. Dale: Complainant objects to the introduction of this document for the reason that it is not certified to, and neither is the original copy certified to from which it was made, as a correct copy from which this photostatic was made.

Document handed to the stenographer, marked Defendant's Exhibit P, and is admitted in evidence with ruling reserved on the objection.

By Mr. Creekmore: We offer in evidence a photostatic copy of Chart 46 of the same survey as last above, and ask that it be marked Exhibit Q for the defendant.

By Mr. Dale: Complainant objects to the same for the reason that there is no evidence that the original, from which this purports to be a photostatic copy, is correct, and is not certified to, and there is no proof of the authenti-ty of this copy.

[fol. 295] Document admitted in evidence subject to the objection of counsel, handed to the stenographer and marked Exhibit Q.

By Mr. Creekmore: I desire to state to counsel that before the record is made up, if they insist on these photostatic copies being certified to, and they will let us know, we will have it done.

We next offer Sheet No. 47, Survey of the Mississippi River, made under the direction of the Mississippi River Commission in 1913 and 1915, and ask that it be marked Exhibit R.

By Mr. Dale: We make the same objection on behalf of the complainant.

Document marked Exhibit R for the defendant, and admitted subject to the objection.

By Mr. Creekmore: We next offer a photostatic copy of chart of the Mississippi Levee District from Concordia to

Wilson's Point, showing location of levee in June, 1890, made by William Starting, Chief Engineer, initialed and numbered M R C 45, and ask that the same be marked Exhibit S, the same consisting of two sheets brad-ed together. [fol. 296] By Mr. Dale: Let the record show we make the same objection to this document also as to the others.

Document handed to the stenographer and marked Exhibit S, and is admitted subject to the objection of counsel.

By Mr. Creekmore: We offer a photostatic copy of tracing of controlling levee line of Third Levee District, corrected to June 30th, 1896, initialed M. R. C. No. 608, and ask that the same be marked Exhibit T, this exhibit consisting of two sheets fastened together.

By Mr. Dale: We make the same objection to this document also.

Document handed to the stenographer and marked Exhibit T and is admitted subject to the objection.

By Mr. Creekmore: We now offer a tracing of the Mississippi Levee District showing existing and abandoned levee lines and recent and 1882 bank lines, dated December 14th, 1901, by Capt. C. H. West, Chief Engineer, and ask that it be made Exhibit U, the same consisting of two sheets.

By Mr. Dale: Note the same objection to this document as we made to the others.

Document handed to the stenographer and marked Ex- [fol. 297] hibit U for the defendant. Ruling on objection reserved by the Commissioner.

C. F. Hume, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Creekmore:

Q. What is your name, please sir?
A. C. F. Hume.
Q. And your age?
A. I am in my sixty-third year.
Q. Where do you live?

A. Northeast of Edwards, Hinds county, five miles.

Q. Edwards, Hinds county, Mississippi?

A. Yes, sir.

Q. Did you ever live at or near Chotard, Issaquena county?

A. Yes, sir.

Q. When did you first go there?

A. The last of October, 1896.

Q. How long did you remain there?

A. That was my residence until January 1st, 1907, a little over ten years.

Q. Were you familiar with the tract of land known as [fol. 298] Island 98, or Tullos Island?

A. Yes, sir.

Q. When you went there in October, 1896, what was the situation with respect to Island 98, whether it was there or not, and how much, if any?

A. Oh yes, sir; there was land there all right enough; yes, sir.

Q. Describe the water about that land?

A. The water—well, the river was eating in on the Mississippi side, caving in on there, and the land, of course,—well, the upper part of that land at that time was almost due west from Chotard Landing.

Q. Was that across the channel of the river?

A. Yes, sir.

Q. The river then, at that time, was east of this land?

A. Yes, sir; yes, sir.

Q. Now, was it an island?

A. Was it an island?

Q. Yes, sir?

A. At that time we called it a bar.

Q. Now, describe the way the waters were?

A. Well, the main channel was east of there—east of this land,—the island, we will call it—east of the island, and it was—the more it would cave here the more it would build [fol. 299] north and east from the lower part, or what we called the island would go north and come east, of course, the more the current became on the Mississippi side.

Q. You were not there, or were you, when the river once ran in approximately its present location?

A. Prior to the early eighties, you mean?

Q. Yes, sir?

A. No, sir.

Q. Now, what was there towards the south of this tract of land, if anything, in the way of a chute or stream, Mr. Hume?

A. South of it?

Q. Yes, sir? Or across it?

A. Nothing but the main river.

Q. Nothing but the main river south of it?

A. No, sir.

Q. In high water what was the situation there with respect to the island?

A. It was an island then all right enough.

Q. All right, how did the boats go?

A. The boats,—well, when they would have a bar,—when the Savannah would come down she would put freight off, for instance, at the camp, and if she had no freight from Vicksburg up for this Bend in here, you know,—for this [fol. 300] landing, I have known it to come across from Henderson's and go on the opposite side, or the west side of the island. Then it was high water, following the old Mississippi river channel.

Q. Following the old channel?

A. Yes, sir.

Q. Now, when the water was low, could you or not tell where the channel was?

A. Yes, sir; you could tell.

Q. How could you tell?

A. From the timber that was on the Louisiana side,——

Q. (Interposing.) From the timber, did you say?

A. Yes, sir; from the timber that was on the Louisiana side and the low depression there. There was a lake. A little hole. They called them lakes. Mr. Purnell and I, we camped over there.

Q. In other words, there was a depression where the old channel had been?

A. Yes, sir; and in some places lakes—what we would call lakes,—little lakes.

Q. Now, coming back north and east from there, from that depression was what you say was the island when the water was high?

A. Yes, sir.

Q. What sort of growth was on that land in 1896 and '97 and along there?

[fol. 301] A. Cottonwood and willow principally.

Q. What size cottonwood were they?

A. Well, I—I should think that some of them would go practically three feet in diameter.

Q. Are you familiar with the woods,—cottonwood and willows and their growth?

A. Generally I am.

Q. All right, you have lived in the woods all your life, have you not?

A. Oh yes.

Q. What about the age of those cottonwoods on that island in '96 and '97,—the apparent age,—your best judgment?

A. Well, they were pretty old, I judge, from the size of them. There was no way of telling unless you cut one down and counted the rings. You would just have to approximate it.

Q. I understand. Just give your best judgment? Approximate the age of the biggest cottonwoods there?

A. I should think that they ought to be at least forty or fifty years old.

Q. How much area was there in this island? How many acres, about, in '96 and '97?

A. At a low stage of water do you have reference to? A low stage?

[fol. 302] Q. Yes, sir.

A. I don't know. I have not the remotest idea.

Q. Was it a small island or a good big island?

A. It was a great big island, my goodness alive. By going the old river when the water was up it was where the river is now,—going back there now, from Henderson up to Newman's Point, or about there where it struck the river again, I would judge it to be four or five miles, and around the other way twelve or fifteen or possible sixteen miles around the current.

Q. Where these big cottonwoods grew and all in there, was that higher or lower than it was back along the old river bed?

A. Higher. I do not know how many feet, but I would guess possibly—I don't know—I guess possibly twenty or twenty-five or maybe thirty feet.

Q. You say you remained there until 1907?

A. Yes, sir.

Q. During that period did this island remain there as you have described it?

A. Oh, yes, sir.

Q. It never washed away?

A. No, sir; it build all the time—growing larger.

Q. Now, were you there along there in 1912 and 1913 when it is said that the river cut back into its old channel?

[fol. 303] A. No, sir; I was not there.

Q. Have you been there since that time?

A. I was there last September, a year ago.

Q. Last September, a year ago?

A. Yes, sir.

Q. Was the river then where it was when you left there in 1907?

A. No indeed.

Q. Where was it at that time with reference to the old river channel that you have described?

A. Chotard chute?

Q. Yes, sir?

A. Well, I guess any where—I would judge any where from one to three or four hundred yards coming out into the chute,—the bank of the rover when I left there in 1907.

Q. What I mean is this, since the river has changed, did it change to where this old chute was, or to a different place, where the old channel was?

A. I understand that it is right approximately in the old channel now.

Q. As near as you can tell it is right in the old channel now?

A. Yes, sir.

Q. Take the witness.

Cross-examination.

[fol. 304] By Mr. Dale:

Q. You say you lived ten years near Chotard in 1896?

A. No, sir; I said that I went there in 1896, on the 31st of October.

Q. Where did you live?
A. I was with Mr. H. B. Purnell.
Q. What property or place did you live on?
A. On his place, now Auration Plantation.
Q. How far is that from the Mississippi river?
A. Most of it was in the Mississippi river at that time.
Q. Most of it in the river?
A. Yes, sir.
Q. Where was that with reference to Chotard Landing?
A. They adjoined,—just north of it. Auration was just north of it.
Q. Auration just north of Chotard?
A. Yes, sir.
Q. And joined Chotard?
A. Yes, sir.
Q. It was nearly all caved in then?
A. Well, compared to what it was.
Q. Did it subsequently all cave in?
A. No, sir; there is a portion of it there. I think there [fol. 305] is possibly thirty acres back of the levee there, and a little strip in front.
Q. How far is that above Tullos Island—what you call Tullos Island?
A. Island 98?
Q. What name do you know that Island by?
A. I have heard it called by the name of Scruggs Island. There was a nigger by the name of Scruggs, he had a plantation on there, or a farm. I think so. I don't know, but I was told. That was before I went up there.
Q. You have heard it called Scruggs' Island?
A. Yes, sir.
Q. Did this nigger live on Scruggs' Island that you speak of?
A. At times I understand he did.
Q. That was before you went up there, you say?
A. Yes, sir.
Q. Personally you don't know that?
A. No, sir.
Q. Have you been on the island itself—you go out on the island?
A. Yes, sir; what we claim the island is now.
Q. What you claim the island is now?

A. Yes, sir.

Q. Do you know whether that same island that is there [fol. 306] now is the same island that was there when you went there? When you went on it?

A. Part of it is. It was building every year, north and east.

Q. Part of it is the same land that was there when you went there?

A. Yes, sir.

Q. How could you identify it?

A. For several reasons. It was building all the time.

Q. You went there in 1886 first, and how long did you stay there?

A. My residence was there until January 1st, 1907.

Q. Until 1907?

A. Yes, sir.

Q. Did you stay there all that time?

A. Practically. A few months I spent out of there and then I was right here in Hinds county. That was in '99.

Q. What was your employment?

A. When I was in the Delta?

Q. When you lived there on this place adjoining Chotard?

A. I was running a store and managing a little place for Mr. Purnell—this plantation I spoke of.

Q. This island that you spoke of, in what position in reference to the compass, east, west, north or south, was [fol. 307] it from the place you lived on?

A. Well, it was almost due west form Chotard Landing.

Q. Was that west from Chotard Landing?

A. Yes, sir; almost.

Q. And this island at that time was what size?

A. Well, I can't tell you. It was a great big batch of land though.

Q. You state that on the concave side,—the short side, that it was about five miles long, and about fifteen miles around the bend?

A. Yes, sir; I judge it to be that.

Q. The curve, the concave side of that island, around the bend, next to the main shore, was fifteen miles long?

A. Anywhere from ten to twelve or fifteen miles.

Q. And that was the island you speak about, Island 98,—the same island you speak about as Island 98?

A. I guess so, if you count the bar as an island. As long as it caved, before the river went back to the Louisiana side,—as long as it caved here, the bar would gradually build north and come east.

Q. As long as it caved? Where was it caving?

A. On the Mississippi bank.

Q. The Mississippi bank of the river?

[fol. 308] A. Yes, sir. You understand that it just built north and east. North and east, too, because the current of the Mississippi was growing narrower, more and more towards Searle's Bayou all the time.

Q. Did the island cave any?

A. None that I know of.

Q. How often were you on that island?

A. Well, anywhere from two to forty or fifty, possibly, times a year.

Q. What were you doing over there?

A. Fishing, hunting, loafing and having a good time.

Q. And you carried that business on in connection with your storekeeping?

A. Yes, sir; Mr. Purnell was there at times.

Q. Who kept the store for you while you was gone?

A. Mr. Purnell.

Q. Were you and Mr. Purnell partners?

A. No, sir.

Q. What did he have to do with the store?

A. He was the proprietor.

Q. He owned the store?

A. Yes, sir; the young brother did. H. P. Purnell owned the store, and W. R. Purnell was the one that was with me over there in camp on the bar.

Q. And who owned the store?

[fol. 309] A. H. P. Purnell.

Q. You did not own it then? You merely clerked?

A. No; I was at work on a salary.

Q. When was the last time you saw that island you spoke of?

A. Last September, a year ago.

Q. And that island that is there now is the island you spoke of, is it?

A. Yes, sir; I don't know anything to the contrary.

Q. Well now, when you went there the channel of the river was between that island and the Mississippi shore made in 1896?

A. Yes, sir.

Q. The big steamboats, the Anchor Line, they passed down between the island you are talking about and the Mississippi shore?

A. Yes, sir.

Q. I believe you said something about some boats passing on the other side?

A. That was during the high water.

Q. They did not go any time except during high water?

A. No, sir.

Q. The boats did not pass west of the island you speak of except during high water?

[fol. 310] A. No, sir; not that I am aware of.

Q. From 1896 until 1907 they all came east of the island and between the island you are talking about and the Mississippi shore?

A. Yes, sir.

Q. You were not there after 1907 except when you went there in September, a year ago, were you?

A. No; I was up there the fall and winter—each fall and winter, until 1910-1910 inclusive. I was there in the fall or winter of 1907 and 1908, '8 and '9, '9 and '10, and after February, 1910, I did not go there again until last September, a year ago. My father died in 1910?

Q. The only timber you knew about on the island was cottonwood and willow?

A. That is all that I call to memory.

Q. And you were there from forty to fifty times a year?

A. I say from twice to forty or fifty times a year.

Q. And if there had been other timber on there besides the cottonwood and the willow you would have noticed it, would you?

A. Possibly I would.

Q. Did you ever work in the timber in any way?

A. How's that?

Q. Are you a timber man?

[fol. 311] A. No, sir.

Q. You have never worked in the timber? You have never gone out in the timber?

A. I have split rails, and worked in that way. But as far as logging, as it is called, for a saw mill purposes or anything like that I never did.

Q. But you know timber all right?

A. Yes, sir.

Q. You were raised in the country were you, or not?

A. Yes, sir.

Q. You are perfectly familiar with the kind of timber, the timber on this island you speak about, was cottonwood and willow?

A. Principally.

Q. Was there any other kind?

A. Possibly there was scyamore.

Q. Do you know whether there was any *scy*amore or not?

A. No; not positively.

Q. Do you know whether there was any gum or not?

A. Gum?

Q. Yes, sir?

A. I can't remember positively.

Q. Do you know whether there was any oak there or not?

A. Any oak?

[fol. 312] Q. Yes, sir?

A. I can't remember that.

Q. If there was any other timber there besides cottonwood and willow you don't know it, and yet you were on that island from to forty or fifty times a year?

A. I don't remember it.

Q. The island on the river was on one side, on the shore side was about five miles, and on the side where the boats went around in the bend, next to the Mississippi shore was somewhere along from ten to fifteen?

A. That is about it. That is my estimate.

Q. You never measured any of the timber, cottonwood or willow either?

A. No, sir?

Q. Which was the larger, the cottonwood or the willow?

A. How's that?

Q. Which was the larger, the cottonwood or the willow?

A. Oh, the cottonwood.

Q. And what size do you say it was then?

A. Well, I judge some of it was three feet in diameter.

Q. Did you say that it was twenty or twenty-five inches,

or that it might have been thirty inches awhile ago? Prob- [fol. 313] ably you were talking about the island.

A. I would say that there was some about three feet in diameter.

Q. When was it that it was about three feet in diameter —what year? Was it in 1896 or 1907, or 1926 or 1925?

A. I did not go over there in 1925.

Q. You did not go there at all?

A. No; not in 1925.

Q. When did you see it last? When did you see the island last?

A. Last September, a year ago I was up there at the plantation.

Q. I asked you when you last saw the island there?

A. I think the last time that I was there was in the winter of 1909. It might have been 1908.

Q. You said awhile ago that it was in 1907 the last time as I understood you?

A. That was when I was leaving there.

Q. You went there after?

A. I went there after, you know.

Q. After that did you go on the island?

A. Yes, sir.

Q. You went over there hunting?

A. Yes, sir.

Q. That was when you noticed that the timber was about [fol. 314] three feet in diameter?

A. Well, I don't know that that was the exact time, but about then.

Q. That was as big as you have ever seen it, was it? That was the last time that you saw it?

A. About that, according to my recollection.

Q. It had gained its largest size in 1909, the last time that you saw it, of course?

A. I suppose so; yes, sir.

Q. And at that time it was about three feet in diameter. Now, on which part of that island was the timber the larger? If it was larger at one part than another?

A. It was the lower part.

Q. The lower part?

A. Yes, sir.

Q. How far was that from Chotard Landing, I will say —from the store?

A. The store was back of the landing.

Q. The store was back of the landing?

A. Yes, sir.

Q. It was right close to the landing, was it?

A. A mile.

Q. A mile back of the landing?

A. Yes, sir.

[fol. 315] Q. The store was not on the river then?

A. No, sir; it was back of the levee.

Q. Now, was Chotard Landing due west of your store?

A. Almost; yes, sir.

Q. How far was it from Chotard Landing?

A. The store?

Q. No; the big timber that you are talking about?

A. It was across the river, of course, and then on the high part of the ground from low water. You mean from low water? The highest part of the ground was where the largest timber was. I would judge it to be anywhere from a quarter or possibly a half a mile from the water's edge.

Q. I am just asking you how far it was from Chotard Landing?

A. I never have measured the river. I don't know how far.

Q. Just simply across the river to the edge of the island?

A. Yes, sir.

Q. Straight in front of Chotard, or practically so?

A. Yes, sir.

Q. Due west from Chotard?

A. Almost due west, I will say.

Q. You don't know whether that island ever caved away entirely or not?

[fol. 316] A. That was before my time.

Q. You never knew anything about it before '96? You don't know whether that was a part of the Newman tow head, do you, Willow Point or Bewman tow head? The part you spoke about?

A. No, sir; I do not.

Q. As far as you know it might have been connected with it and cut off from there by the river?

A. So far as I know; yes, sir.

Q. Did you ever hear of the Newman Tow Head?
A. Possibly I may have.
Q. You don't know whether you did or not?
A. I don't think that I have known it by that name.
Q. Did you ever hear of Willow Point?
A. Oh yes, sir.
Q. Did you ever hear of the Newman bar?
A. Yes, sir.
Q. Then you are not sure that you ever heard of Newman Tow head, but you don't know?
A. I may have, but I don't recollect it.
Q. Were you ever on Newman's bar?
A. No, sir.
Q. And when you were there was that bar making out from the Louisiana shore towards Mississippi, between 1896 and 1907?
[fol. 317] A. I don't know that you could call it that. It was making north and east from the high part of the island.
Q. Making north and east?
A. Yes, sir.
Q. From Willow Point?
A. Oh no.
Q. I ask you whether or not it was not making east or northeast from Willow Point, making out this way from the Louisiana side?
A. Willow Point is above this island.
Q. How far above?
A. I don't know.
Q. Do you know where Willow Point is?
A. Some several miles. I have always known it as around the bend from the bar.
Q. Willow Point is around the bar from the part you speak of?
A. Yes, sir.
Q. Is the bar on the Louisiana side opposite this island and does it extend away out towards Mississippi?
A. At Willow Point?
Q. Any place? Willow Point or any other place? Is there any bar at all *at all* opposite the island in the river there? Extends out towards the island from the Louisiana shore?
A. Yes, sir; the same thing. It goes both ways.

[fol. 318] Q. What do you mean by "Goes both ways?"

A. The highest part of this land, this island here. It is high here and low towards Louisiana.

Q. I am not talking about the island. I am talking about the Louisiana shore. Did a bar make out from the Louisiana shore anywhere about the island?

A. I don't know whether it did or not.

Q. If any ever made out you never saw it?

A. I don't know whether it made out or how it made.

Q. Did you ever see from the island you are talking about any bar over on the Louisiana shore?

A. From the island on the Louisiana shore?

Q. Could you see—you said that you were on the island from two to forty or fifty times a year between 1896 and 1907, didn't you? You said that, didn't you?

A. Yes, sir.

Q. You could see the Louisiana shore from the island, couldn't you?

A. Well, I could see the timber.

Q. You could see the timber?

A. Yes, sir.

Q. Could you or not tell whether there was a bar making on the Louisiana shore opposite this place?

A. Yes, sir; between the island and the bar and the main Louisiana bank, I mean, of the old river.

[fol. 319] Q. Was there a bar there or was there not?

A. Yes, sir; there was land there.

Q. But you don't know whether it was a bar or just made land?

A. Well, for one reason it was made land all right enough.

Q. But you are not willing to say whether it was a bar or not?

A. We called it a bar. We called the whole thing a bar for that matter.

Q. What do you mean when you say you called the whole thing a bar?

A. The land that was there.

Q. You are talking about over on the Mississippi side now?

A. Yes, sir.

Q. I am not asking about the Mississippi side. I am asking you about whether or not there was a bar over on the Louisiana side? You don't know? That is right, isn't it?

A. No; I will not say that.

Q. You will not say that you don't know and you will not say that you do know?

A. The best I can remember.

Q. I don't want anything you don't know. I just want [fol. 320] you to tell me what you do know?

A. The best I can remember that bar built north and east.

Q. You mean the bar on the Mississippi side? You are talking about this island No. 98 building north and east?

A. Yes, sir.

Q. I am not asking you about that any more. I am asking you if you know about a bar building out from the Louisiana side? About any bar building out from the Louisiana side. That is what I am asking you.

A. At that place?

Q. Yes, sir?

A. Yes, sir; in low water there was a bar there.

Q. You could not notice any bar at all except in low water. Was there a bluff bank on the Louisiana side?

A. It was a gradual slope from the highest part of the island towards Louisiana.

Q. You mean the slope went out from the island towards the Louisiana shore. I am not asking you a word about the island. I am asking you — there was a bank or a bluff on the Lousiana side?

A. No, sir; not that I remember of.

Q. But you don't know whether there was or not?

A. No, sir.

[fol. 321] Q. You don't know whether there was a bank or a bluff on the Louisiana side and you don't know whether there was a bar on the Louisiana side, and you don't know whether there was — bar formed out from the Louisiana side over towards the Mississippi side?

A. No, sir; I do not.

Q. What you have been talking about was connected over in times of low water you could go across from the Louisiana shore from the island you are talking about?

A. I think so; yes, sir.

Q. You could walk across from the island you are talking about over to the Louisiana shore?

A. In places; yes, sir.

Q. And there was just a depression between that island and the Louisiana shore?

A. Yes, sir.

Q. The steamboats could run through that depression in high water?

A. Yes, sir; in high water I have known them to do it.

Q. Did that condition exist all of the time from 1896 to 1907, as long as you were there?

A. Yes, sir.

Q. Practically no change?

A. No, sir; only the bar was getting larger all the time.

[fol. 322] Q. The bar was getting larger?

A. Yes, sir.

Q. Extending over the river further?

A. Yes, sir.

Q. It was the Mississippi side that it was caving from?

A. Yes, sir; and the bar built towards the Mississippi side the more it caved.

Q. What size was the island when you first noticed it in 1896? What was its length on the Mississippi side and what was its length on the other side?

A. Well, now, that I can't tell. It was a good big body of land there at that time.

Q. Did it extend above Chotard Landing?

A. Yes, sir.

Q. How far above?

A. When I first went there in '96 and '97—the fall of '96 and '97, the bar was, I judge,—the upper end of the bar was about opposite Scruggs' Landing.

Q. Was that bar at that time, on the Mississippi side, the long side, five or six miles long?

A. I would judge that it was possibly longer.

Q. Possibly longer?

A. Possibly so.

Q. It might have been seven or eight?

[fol. 323] Q. Where is Scruggs' Landing with reference to Chotard Landing?

A. I would judge it is,—it would be four or five or maybe six miles above.

Q. Scruggs' Landing is about four or five or six miles above?

A. I judge it to be that.

Q. Chotard Landing?

A. Yes, sir; where Chotard Landing was then.

Q. What plantation was Scruggs' Landing on, you *you* recollect?

A. Scruggs' I believe.

Q. Did the plantation have a name?

A. Yes, sir.

Q. What was the name of the plantation?

A. It was called Scruggs' I think, but I am not positive.

Q. You spoke of this Island 98. When did you first hear of it being called Island 98?

A. When I went up in the Delta in '96.

Q. Who did you hear call it that?

A. Every one that spoke of it called it by that name. They would call it Scruggs' Island, some would.

Q. Called it Scruggs' Island?

A. Some did; yes, sir.

[fol. 324] Q. That was opposite Scruggs' Landing was it they called Island 98?

A. Scruggs Island.

Q. It was in the river opposite his place?

A. The upper end of the bar was in about 1909 or 1910. It came on up there last. I judge the upper end was just about opposite Scruggs' Landing, or where Scruggs' Landing was then.

Q. Well, was it there when you first went there in 1896?

A. Well, the land, of course, was further west than it is now, by a great deal. There is a difference in the amount of it that has caved off in there now.

Q. But the island was opposite of Scruggs Landing was it, at the time?

A. A portion of it. A portion of the bar was; yes, sir, from the island.

Q. They called it Scruggs Island?

A. Some did and some called it Island 98. I think the Government had it down there as Island 98.

Q. You don't know that?

A. No; I am not positive of it, but I have always heard it spoken of as that, Island 98. I know it was an island that was in front of Chotard.

Q. And also in front of Scruggs?

[fol. 325] A. Well, possibly it did go up there.

Q. It was some island, anyhow?

A. Yes, sir.

Q. However far it went?

A. Yes, sir.

Q. Did you say the main island was west of Chotard Landing?

A. How's that?

Q. I was under the impression you said that the main island was west of Chotard Landing. Is that correct or not?

A. The high part of the land I said was approximately west of Chotard Landing.

By Mr. Brandon:

Q. On direct examination, in response to a question as to whether the island was there, you said there was land there, is that correct?

A. How's that?

Q. You said in reply to a question asked you by Judge Creekmore when you first went on the stand as to whether Island 98 was left, any of it, you said there was land there, didn't you?

A. In regard to the highest place?

Q. You said that there was land there?

A. Yes, sir.

[fol. 326] Q. Now, you testified that that land was connected by bars with the Louisiana shore? That is correct? In low water?

A. Yes, sir.

Q. You had never been up there before 1896 had you?

A. No, sir.

Q. If the land that you refer to was connected with the Louisiana shore, you don't know whether it was a part of the original—of your own knowledge—whether it was a part of the original Island 98 or not, do you?

A. How's that?

Q. I say, you don't know, of your own knowledge—if this land you refer to was connected to the Louisiana shore, you don't know, of your own knowledge, whether it was a part of the original Island 98 or not, do you?

A. No, sir.

Q. You do not?

A. No, sir.

Q. That is all.

Redirect examination.

By Mr. Creekmore:

Q. Mr. Hume, as I understand you, you have stated the conditions as to the high land, the low land, the depressions and the growth of things on there?

[fol. 327] A. Yes, sir.

Q. You don't undertake, of course, to tell anything of your own knowledge about it before you ever went there?

A. No, sir.

Q. Before you ever saw it?

A. Certainly, of course not.

Q. That is all. Stand aside.

(Witness excused.)

R. E. Foster, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Creekmore:

Q. State your name and age to the stenographer, please?

A. R. E. Foster; seventy-five.

Q. Where do you live, Mr. Foster?

A. Issaquena county, on the banks of the Mississippi River.

Q. Do you know Island 98, sometimes called Tullos Island, and sometimes called Scruggs' Island?

A. Yes, sir.

[fol. 328] Q. Where do you live with reference to that island?

A. Well, right across the river, about three miles over on the land.

Q. How long have you lived there?

A. Since 1882.

Q. Is or not this island in sight of your place?

A. I have three places on the front. It is in sight of the lower place; yes, sir.

Q. What is your occupation?

A. Farmer.

Q. Have you lived there continuously since 1882?

A. I have.

Q. Do you hold any official position in the state, Mr. Foster?

A. I am a member of the legislature.

Q. From Issaquena county?

A. Yes, sir.

Q. How long have you been a member of the legislature, Mr. Foster?

A. Since 1912.

Q. Since 1912?

A. Yes, sir.

Q. Since 1882 how frequently have you seen Island 98?

A. Oh, I don't know about that. I go down to my place,—the lower place, sometimes twice a day, and sometimes [fol. 329] maybe once a week.

Q. Have you seen this island through those years as often as once a month?

A. Yes, sir; more than that. Much more than that.

Q. Much more than that?

A. Yes, sir.

Q. State please, whether or not between 1882 and the present time that island has washed away?

A. It never all washed away; no, sir. If it did I didn't see it. All of the main part is there now. It never all washed away.

Q. How many——

A. (Interposing.) You can see from the land on this side just as plain as I can see you, as there is nothing in sight between you but the river.

Q. You saw that frequently?

A. Yes, sir.

Q. Between 1882 and 1912 did the river cave away the Mississippi bank between your place and this island and cut into the Mississippi shore?

A. Yes, sir; I lost one place there.

Q. You lost one place by it?

A. Yes, sir.

Q. And of course you know about it then?

A. I lost my Arcadia place.

[fol. 330] Q. In that caving of the river there you say the island did not wash away?

A. No, sir.

Q. Are you able to say how much of it was left there and not washed away?

A. No, sir.

Q. Well, would you say that it was a small or a considerable area?

A. Well, I don't know the extent of the island—what it was called there on the river—but it used to go on up further west, over the upper part there, around next to the Louisiana side. I don't know how far it was.

Q. You say at times you could see this island from your place as you went about your business?

A. Yes, sir.

Q. What was on the land as you would look across to the island?

A. Well, at one time there was some land in cultivation, and there was a tenant house. I stopped there several times for the boat to put off and take on freight. There was a gin on it.

Q. You spoke of a gin being on it at one time. Was this island ever occupied by a man named Scruggs?

A. Yes, sir.

Q. It was known as Scruggs' Island?

[fol. 331] A. Yes, sir; it was called two or three names—98 and Scruggs, and I don't know what the other one was.

Q. In the nineties when you looked across there and saw this island, was there or not timber growing on a part of it?

A. There was. The best I could tell with the eye.

Q. What was the size of the timber? I mean the height?

A. It looked like it might be forty or fifty feet, maybe more, I don't know.

Q. Tall timber?

A. Yes, sir.

Q. Were you ever on the island?

A. I was never on the island—never got off the boat. I never was over there.

Q. You could see it from the Mississippi shore?

A. Yes, sir.

Q. Now, would it be possible for that island to be washed away and you not know it?

A. No, sir; for I have been there. I bought that property in 1882 and I have been there from that time until this, and the island is there right now to see it. There has been no gin on it for a long time, though.

Q. Yes, I understand that. In 1882 where did the river run in reference to its present location, or do you know [fol. 332] about that?

A. What time—what date?

Q. In 1882?

A. I moved there in 1882.

Q. Did the river run then where it runs now?

A. I think it ran between that Island and the Louisiana side.

Q. Do you know about the cut-off in 1912?

A. Out in front of the Meyer place?

Q. No; down at the island, where it cut back the west side of the Island?

A. Well, that river changed there time and time again. We discussed it with the steamboat captains coming and going. It is there yet to show. Part of it is there. The river is very wide, and sometimes a sand bar will show up in the center, sometimes on the Mississippi side, and sometimes on the Louisiana side, and sometimes between the sides.

Q. The river shifted there from time to time?

A. Yes, sir; very often.

Q. That is all.

Cross-examination.

By Mr. Dale:

Q. Mr. Foster, how near did you say your nearest place was to the island you have been speaking about?

[fol. 333] A. Just across the river. The river divided us. No, it did not. Not then when I went there. It does now.

Q. You say it does now but it did not when you went there. Are you speaking about in 1882 that you went there?

A. The river did not run between me and the island—between—there was a low place there, but the river run between the island and the Louisiana side.

Q. The river run between the island and the Louisiana side?

A. Yes, sir.

Q. When you went there in 1882?

A. Yes, sir.

Q. When did it change and come back between the island and Mississippi?

A. It has been doing that off and on. You see this place down there commenced to cave in—commenced caving, and it was called to the attention of the Levee Board and the assistant engineer went and looked at it, and they worked on the levee but it just kept on washing until one of my plantations, Arcadia, caved entirely away.

Q. About what time did it begin to cave your place away?

A. My place?

Q. Yes, sir.

[fol. 334] A. Well, it caved there—it did not cave when I first went there, but it commenced caving the second or third year after I went there.

Q. It began about 1884?

A. Yes, sir.

Q. And between that time and 1894, your place was entirely gone?

A. Well, Arcadia plantation was all gone except a little place.

Q. It did not all go, but all except a small part?

A. Let me ask you a question there. Are you talking about the island or my place?

Q. I am talking about your place.

A. A part of my place is there yet.

Q. When did it stop caving at your place?

A. Well, they have been revetting my bank there for eight or ten years.

Q. That does not answer my question. When did the caving stop?

A. The caving has not stopped yet.

Q. It is still caving there at your place?

A. Yes, sir.

Q. When did they revet the bank there?

A. They have been eight or ten years revetting the bank.

[fol. 335] Q. Do you know what years that has been, Mr. Foster?

A. Well, they just patched the revetment there last year. Ten or twelve years before that they revetted there.

Q. Well then, they made a revetment there ten or twelve years before that?

A. Yes, sir.

Q. About 1910?

A. Yes, sir.

Q. Do you recollect the cut-off of 1912?

A. At the island or below there?

Q. The cut off that went through Willow Point?

A. Do you have reference to the island cut off by by caving? It had been going through my place—been doing that for a number of years.

Q. When you went there in 1882 where was the channel of navigation?

A. On the Louisiana side.

Q. Did they have a change and come to the Mississippi side?

A. It is on the Mississippi side now.

Q. When did it change?

A. It gradually changed. My front caved off, and as my front caved off it came on over to my side and it is there right now.

Q. You don't know when the steamboats quit running [fol. 336] west of the island you speak about and began to run east of it?

A. I don't know all of it. It gradually occurred every year as far as that is concerned.

Q. You did not pay much attention to the navigation of the river?

A. Yes, sir; I did because it was cutting my place away mighty fast.

Q. Your place. Of course you were paying attention to your place caving, but you did not pay so much attention to the way that the steamboats ran?

A. I did not; no, sir.

Q. Notwithstanding the fact that you paid a great deal of attention to the way the steamboats were running, you don't know when it was that they made the change and stopped running on the Louisiana side of the island you have been talking about, and began running on the Mississippi side?

A. No; that was gradual. The little boats ran there first, and after a while the big boats began to go through there.

Q. Can you give us any idea at all as to about what time it was that the big boats began to go through there next to the Mississippi shore?

A. No, sir; I can not, because in the front of my place there was a big island there, and I owned 680 acres, and the [fol. 337] river used to go on the other side of that, and go around there and cut off and by my place. I recollect the cut off was made gradually, made year by year. The small boats went through first, and there was something on it in the nature of a sand bar, and after that washed away I saw the bigger boats go through.

Q. What size was that island when you first recollect it?

A. I can't tell you for I don't know.

Q. Did it extend above your place?

A. No, sir.

Q. How far was it below your place?

A. Just across the river from my lower place.

Q. Was it right out in front of your place—opposite your place?

A. Not my home place, but my lower place.

Q. I am not talking about your home place. What are the names of your plantations?

A. Arcadia and Forest Home—two places there together.

Q. Now then, which one was it that caved in, Arcadia or Forest home?

A. Arcadia. Forest Home is there yet.

Q. Is Forest Home above or below Arcadia?

A. Below.

Q. Did it cave in the river, or any part of it?

[fol. 337½] A. A part of it caved in the river; yes, sir.

Q. A part of Arcadia and a part of Forest Home are still there?

A. A little part of Arcadia is there yet. A very small part of it.

Q. And a part of Forest Home is still there?
A. Yes, sir.
Q. Now, was this island in front of both of your places?
A. Yes, sir.
Q. When did you first hear it called Island 98, Mr. Foster?
A. Ever since I have been there, and I went there in 1882, as I said.
Q. You just generally heard it called Island 98?
A. Yes, sir; I had no interest in it though.
Q. I believe you said that there was a gin on it?
A. Yes, sir.
Q. Do you know who owned the gin and operated it?
A. No, sir.
Q. When was that gin there?
A. In 1882 when I bought the property.
Q. Did they gin cotton over there? Did you see the gin running?
A. No; I did not.
[fol. 338] Q. Did you go over there on that island at all?
A. No, I did not, only on the boat.
Q. Did you hear the gin running, or know whether it run at all or not?
A. I don't know.
Q. How do you know the gin was there?
A. I saw the building from where the boats landed on the upper side to take on and put off freight.
Q. Could you tell that it was a gin building from across the river?
A. I could see it from the boat landing when they would put off freight on the island when I would be on the boat.
Q. You would be on the boats when they would land there?
A. Yes, sir. Now you have got it straight.
Q. What size was that island in 1882 when you first knew it?
A. I don't know.
Q. You don't know how long it was?
A. I do not.
Q. You don't know how wide it was?
A. I do not.
Q. You don't know anything about the size of it?

[fol. 339] A. No, sir.

Q. You could not even approximate it?

A. I had no interest in it whatever. I knew that it was there then and it is there yet.

Q. What size of the trees on it?

A. I don't know.

Q. Do you know what kind of trees were on it?

A. Cottonwood and willows from the way it looked.

Q. What direction from your place with reference to the points of the compass was that island?

A. West.

Q. Has the channel filled up between your place and what you say was that island?

A. No, sir; the Mississippi river is there now.

Q. The Mississippi river is there now?

A. Yes, sir.

Q. The Mississippi river is over next to your place now?

A. Yes, sir; I suppose the channel filled up between that island and the Louisiana side.

Q. Your idea is between that island and the Louisiana side the channel is now filled up?

A. I think so; yes, sir.

Q. Of course, not having gone on the island at all you don't know what size the trees were in 1882, and what size [fol. 340] they are now?

A. No, sir; I do not.

Q. Did the island cave at all that you know of?

A. Well, by reason it must have, because the river run on the other side and now the river runs between the island and my place. There must have considerable caved off.

Q. Do you know whether it did or not?

A. Do I know whether the island caved off?

Q. Yes, sir?

A. The island is gone—the part next to me is gone and the river channel is there.

Q. A pure open river between you now and the Louisiana shore, is there, and the island is gone?

A. No, sir; when the island was there the river ran between the island and my place. It did not run between there when I went there in 1882.

Q. Well now, you say it must have caved. I am trying to get from you whether it caved or not?

A. I will explain it this way. Take three pieces of paper. That is the island there. That is supposed to be the island. That was there. This is my property here. When I went there there was only a small place going through there. It was not running through there only in high water. Now the whole river is between that island and my place. Now [fol. 341] do you understand it? There is no timber between that place and my place. Something must have gone out.

Q. What I am trying to get at is——

A. (Interposing.) I am trying to explain it to you. Do you understand that?

Q. I will understand it before I get through with you, Captain. You don't know how much of that island is left, do you?

A. No, sir.

Q. You don't know whether it is just a small part or a big one?

A. The channel of the river there—the river must be two or three miles wide.

Q. Two or three miles wide from your place to where that island remains?

A. It must be two miles; yes, sir.

Q. You can only tell there is some of the island there by looking across and seeing the timber?

A. That is it.

Q. Could you tell whether the timber is on the island or the main land?

A. Yes, sir; the growth, I don't know that, but the green timber I saw. I don't know what size it was. I can't tell you that.

Q. The only way you have of knowing that there is any [fol. 342] of the island left is by seeing the timber over there is a distance of two miles?

A. Yes, sir; and the hunters being over there on the island. I have not been over there myself.

Q. You can't tell what anybody else told you.

A. I can't tell how big the timber is, but I do know that the whole channel of the river is between the island and my place.

Q. The only reason you have of knowing that there is any of the island left there now at all is by the fact that you see timber over a distance of about two miles?

A. Yes, sir; you can. The old channel was supposed to be between the island, the main river. That is smaller timber, and there is timber below there on Island 98. I can tell you that much.

Q. Does the main bank cave out around the point of Island 98?

A. Now?

Q. Yes.

A. No, sir.

Q. Did it in 1882?

A. Yes, sir.

Q. What direction would you look from your place to see this timber?

[fol. 343] A. West.

Q. You would look west then—you would look exactly west from your place?

A. Yes, sir.

Q. You would look exactly west from your place a distance of two miles to see the tall timber?

A. Yes, sir.

Q. How could you tell, at two miles distance, whether the timber was on the main Louisiana shore or on the Island?

A. I could not tell because I have not been on it.

Q. You don't know?

A. No, sir.

Q. It is a fact that you don't know whether the timber which you think is still on the island, whether it is on the island or on the Louisiana shore?

A. I can not. The only reason I said——

Q. (Interposing.) I know. You are just drawing deductions. I am talking about of your own knowledge.

A. I believe it was the island—on the island.

Q. You have not been there and you don't know, and if you absolutely knew it might be the Louisiana shore? That tall timber that you saw there?

A. I would not think so.

Q. You would not think so, but the probabilities are that you don't know?

[fol. 344] A. No, sir.

Q. Did they ever have a little mail boat running through there named the Issaquena?

A. Yes, sir.

Q. What size boat was she?

A. She carried several hundred bales of cotton. I can't tell the capacity of it.

By Mr. Brandon:

Q. What draft did she have?

A. I don't know. I don't know anything about steamboats.

Q. As compared with the Anchor Line Boats? The Anchor Line also run on the Mississippi river?

A. Yes, sir.

Q. Now, as compared with the Anchor Line, was she a smaller boat?

A. She was smaller than the other boats.

Q. A boat of light draft was she?

A. Yes, sir.

Q. The Anchor Line Boats were large boats and drew deep water, did they not?

A. Yes, sir.

Q. Boats of light draft, like the Issaquena, could go through the chute and places where the Anchor Line boats [fol. 345] could not go? Is that a fact?

A. Yes, sir.

Q. Now, before the deep channel of the river changed that ran between what has been represented as formerly Island 98 and the Mississippi shore, boats of light draft could go through there before the Anchor Line boats could, is that a fact?

A. Yes, sir; and they went through there sometimes when the water was low, but not low enough for the other boats to go through.

(Witness excused.)

[fol. 346] Lawrence Towns, colored, called as a witness on behalf of the defendant, was sworn, and testified as follows:

Direct examination.

By Mr. Butler:

Q. What is your name?

A. Lawrence Towns.

Q. What is your age, Lawrence?
A. I am fifty-nine years old.
Q. Where do you live?
A. Chotard.
Q. What county is that in?
A. Issaquena.
Q. How close is Chotard to the Mississippi river?
A. Now?
Q. Yes.
A. Right on the river. It always have been.
Q. How long have you lived over there at Chotard?
A. I went there in February, 1880. I can't read now, and you got to tell me just what you want to know about it. You got to ask me, and I will tell you just what I knows.
Q. Do you know where there is an island, or was an island west of Chotard plantation—northwest of Chotard plantation, sometimes referred to as Island 98, and sometimes referred to as——

[fol. 347] By Mr. Dale: We object to the witness being told the names. Let the witness state the names himself.

By Mr. Butler:

Q. Go ahead and answer the question.
A. Did I know an island?
Q. Yes?
A. I am going to tell what we called an island in there, one that we called Scruggs' Island, and there was another we called Tom Hopkins' Island.
Q. With reference to Chotard plantation where was Scruggs' Island?
A. Where was Scruggs' Island?
Q. Yes?
A. Right in front of Chotard. It run down below Chotard near the line of Warren county.
Q. Did you ever have any connection with steamboats on the Mississippi river?
A. Ten years. Ten years a roustabout.
Q. Where did you operate from?
A. St. Louis to New Orleans; St. Louis to Pittsburgh, Pennsylvania—Kansas City.

Q. Do you know where the land is there now called the island, where you landed with Mr. Albritton, Mr. Creekmore [fol. 348] and myself recently in a boat?

A. Yes, sir.

Q. I will ask you when you first went there, and as far back as you can remember, where the Mississippi channel was with reference to that place where we landed—which side of the landing was it on?

A. West of where we got in the boat at, going that way, towards the Louisiana shore, and a peg setting down there where I showed you. Chotard was there then. Mr. Purnell had a gin called the Cabin Home Gin, and a panther grabbed a girl, a little baby too, a girl with a little baby, and tried to take it away from her, and she whipped it mighty good with a broom stick and made that panther turn her ma's baby loose, and Mr. Purnell, the old man, he went out and killed the panther, and it was twelve foot from tip to tip.

Q. What was between the plantation and the island?

A. The river.

Q. Was it a big river or a little river?

A. The Mississippi river.

Q. Where was the main channel?

A. It was about—when I first went there it was about, I guess, as near as I can come at it, about a mile from where that peg is setting.

Q. Which side of the island was it on?

[fol. 349] A. The channel was on?

Q. Yes?

A. On the other side.

Q. What do you mean by the "other side?" The Louisiana side?

A. Yes, sir. I used to go there every Sunday.

Q. All right, but let us not go into detail so much. Now, has the island been there ever since you have been there?

By Mr. Dale: We object to the question as leading.

By the Commissioner: Yes, do not lead the witness.

By Mr. Butler:

Q. State whether or not the island has been there ever since you have been there?

A. Yes, sir; a part of it.

Q. Do you know where the boats ran that you worked on?

A. The boats running up and down there?

Q. Yes?

A. Yes, sir.

Q. Where did they go?

A. Up the Mississippi river at the bar, this side. That [fol. 350] was on account of caving. The water was washed out. Sometimes it would go in between the Island, and sometimes it would go outside the island. During high water they would go in between, and during low water they would go outside the island, back out here.

Q. And sometimes they would go on one side of the island and sometimes on the other?

A. Yes, sir; when the water was high. In high water.

Q. Now, were you with Mr. Albritton and his man when a survey of that property was made up there about a year ago? When he came up there and surveyed it?

A. Yes, sir; I worked with him and Mr. Learned.

Q. What, if anything, do you know about a lake?

A. There was a lake over there.

Q. Over there about where some large trees were measured and where a hatchet was lost?

A. I know that there has been land there all the while.

Q. What do you know about a lake being there?

A. There was a lake there—a chute,—a lake there, what they call St. Francis Lake—Chute.

Q. When was that lake there?

A. Let's see. In 1900 I was there. The next year after that—I can't read. I got to get the year. In 1900 I got [fol. 351] married.

Q. Was the lake there when you got married?

A. The year before I married.

Q. The lake was there?

A. Yes, sir.

Q. Did you point out to anybody where the lake was on the ground?

A. No, sir; there was no way of knowing the land.

Q. But I asked you did you point out to anybody the place where the lake was, in the last year or two?

A. No, sir.

Q. Did you not show Mr. Albrotton where it was?

A. Yes, sir; I told him that was where it was. They lost a hatchet up there.

Q. At the place or point where you pointed out this lake was, was that as high or lower than the surrounding land there now?

A. Yes, sir.

Q. Lower?

A. Yes, sir; a low part there, and there is a high part.

Q. How far was that lake from those trees that Mr. Albritton, you and myself measured?

A. As near as I can come at it pretty close to it—about [fol. 352] a quarter.

Q. What direction?

A. East; the lake is east from that tree—west from that tree.

Q. From those trees that we measured?

A. Yes, sir; west from that tree. Going out west from the tree where we measured it.

Q. Towards Louisiana?

A. Yes, sir.

Q. That is all.

Cross-examination.

By Mr. Brandon:

Q. What is your present business?

A. What?

Q. What is your business at present?

A. You ask me something I don't know. When you ask me something that I don't understand I have got to get the information.

Q. Do you know what "business" is?

A. What I do?

Q. Yes? What do you do?

A. Run a store.

Q. Where?

A. Chotard.

[fol. 353] Q. Do you farm?

A. I have for two or three years, something like that. Not particular.

Q. You are a colored man?

A. Colored?

Q. Yes?

A. Yes, sir; I am colored.

Q. And you were a colored roustabout on the Mississippi river?

A. Yes, sir.

Q. And you now run a little store for colored people?

A. I do; yes, sir. Now I do.

Q. And how long have you been living up in the neighborhood of your present place?

A. At Chotard?

Q. Chotard?

A. How long have I been living there?

Q. Yes?

A. I went there in 1880.

Q. Was that when you quit the river?

A. No, sir; I was quite a boy then.

Q. Did you continue to work on the river after you went to Chotard?

A. I stayed on the river all the time I was at Chotard [fol. 354] off and on.

Q. Do you know the Newman place over on the Louisiana shore?

A. Yes, sir.

Q. What they call the Newman place, a tow head?

A. I don't know what they call it.

Q. On the Louisana main land, what is the name of the Newman plantation?

A. Do you mean the Newman place?

A. Yes?

A. I don't know what they calls the name of it. They just calls it Newman tow head.

Q. Was it called Willow Point?

A. Well, it was called—some called it Willow Point and I have got it here in my pocket.

Q. You have just handed me a paper. What is the paper you have handed me?

A. The paper I handed you? It is a lease of Mr. Learned and Capt. Reed. They leased me that island. I went over there on that island and tried to homestead it for a home, and I met some people and they told me that I could not

homestead it, that there was no land in this country no more, and so shortly after, a few years after, Capt. Reed, the sheriff of Adams county, he came down there and came up [fol. 355] there and had me to have that lease made out. I had another one. That is the second one that he gave me. He had it made out. I had to sign it up. I was on his island. I have another lease at home in my trunk. He told me that he would lease it to me and I said to him, "Captain, what will the lease be" and he said not over a dollar, and I said, let me have it for five years, then. I found out that I could not get it and it was no use for me to try and get in there, and after I found out that I could not get it I just leased it from him for a dollar a year, and I went to the Justice of the Peace office and signed it up. I had some hogs and things up there, and got to doing pretty good in there. Well, they come out there Mr. Learned and Capt. Reed and surveyed all around out there, all the way around from Chotard to Arcadia—do you want me to tell you all that I know about that?

Q. I just want you to answer my questions.

A. I did.

Q. I asked you what this paper purported to be that you handed me.

A. How?

Q. What is this you handed to me?

Q. You ask me a lot of questions that I don't know. You have to ask me so I can understand you. I can't read.

Q. All right. Did you say Mr. Learned came up there?

A. No, sir; I didn't tell you Mr. Learned. I said Capt. [fol. 356] Reed.

Q. Did you say that Mr. Learned came up there?

A. No, sir; I called Mr. Learned name once or twice myself. I went to Natchez to see him.

Q. Is this the paper that you signed for the lease?

A. There is my name right there? Is that my name there. I can't read. If my name is signed there I must have signed it.

Q. Yes, sir; and you signed it before Mr. Bowers, justice of the peace?

A. Is Mr. Bowers' name there?

Q. I am asking you the question.

Q. I can't read that. You asked me if my name is signed there. If my name is there I signed it.

Q. I asked you if you signed this paper?

A. I signed a paper before Mr. Bowers.

Q. And this is the paper.

A. Yes, sir; I think it is.

Q. And you have had it in your possession all the time have you?

A. How's that? What?

Q. Has it been in your possession? Have you had it in your possession?

A. Yes, sir.

Q. This is the paper is it?

[fol. 357] A. Well, I can't read.

Q. You have had it in your possession? In your pocket, have you?

A. Yes, sir.

Q. Is this paper you have handed me,—is that the paper you signed?

A. Is that the one you just read?

Q. Is that the paper you signed before Mr. Bowers?

A. Yes, sir.

By Mr. Brandon: We will ask that this paper be offered in evidence as Exhibit No. 1 to the cross-examination of this witness, Lawrence Towns, the same being a duly acknowledged contract of lease from Rufus F. Learned and Andrew B. Learned to Lawrence Towns, of land described as a certain tract of land in East Carroll Parish, State of Louisiana, containing about 2,000 acres, more or less, being what is now known as the Newman Tow Head, with accretions, and being a part of the Bell and Willow Point plantations in said Parish.

Document handed to the stenographer and marked Exhibit No. 1 to the cross-examination of this witness.

By Mr. Brandon:

Q. For how many years were you a tenant of the Messrs. Learned under this lease?

A. I signed the lease for five years, but just,—they just [fol. 358] leased it to me for one year at a time.

Q. How many years did you stay there as a tenant?

A. Me.

Q. Yes?

A. I can't just remember. I can't just remember how many years, but I know every Christmas I sent him a dollar and he sent me a little slip to put over that.

Q. A receipt for rent?

A. What?

Q. As a receipt?

A. Yes, sir; to put over that for the dollar. That show that if anybody came there where I had renewed my lease.

Q. Renewed your lease?

A. Yes, sir.

Q. About how many years did you renew your lease in that way by sending a dollar to Mr. Learned?

A. I guess, about as near as I can come at it, about six or eight years, something like that.

Q. Did you cultivate land on the Newman tow head during that time?

A. What?

Q. Did you cultivate any land on the Newman Tow Head over there?

Q. No, sir; I planted some corn down there for my hogs. [fol. 359] I just went down there and dropped it in the cracks. The river fell back and I just dropped it down in the cracks and it came up and the hogs eat it.

Q. You raised a crop over there for your hogs?

A. No, sir; I planted it in the water down there all right. I planted some turnips, too.

Q. How many hogs did you have over there?

A. I had about,—well, at one time I had 800 or 900, something like that. I judge from one up to about 900.

Q. You leased the land, according to the lease contract, the land known as the Newman Tow Head?

A. Yes, sir.

Q. With accretions?

A. Yes, sir.

Q. This Newman Tow head started out from the Louisiana shore, did it not?

A. Well now, I can't say.

Q. Wasn't you a roustabout on the steamboats?

A. Yes, sir.

Q. Then you don't know that this Newman Tow Head started out as a sand bar from the Louisiana shore?

A. I know it washed off.

Q. I didn't ask you that. I asked you if you did not know that the Newman Tow Head started out as a sand bar [fol. 360] from the Louisiana shore, off of the Willow Point plantation?

A. You don't want me to tell you something that I don't know, do you?

Q. I just want you to answer my question.

A. I am trying to answer your question the best I can.

Q. All right then, answer it.

A. I can't say for sure where that did come from.

Q. Was the Newman Tow Head ever attached by a sand bar to the Louisiana shore?

A. Was it ever attached by sand bar to the Louisiana shore—the Newman Tow Head? No, sir; that was across the main river, the Newman Tow Head.

Q. Did you lease it before or after the cut-off?

A. After the cut-off. I know where the cut off was. I went down there on the first boat that ever came through there.

Q. Before the cut-off was the Newman Tow Head attached to the Louisiana shore?

A. Let me see. Before the cut-off was the Newman Tow Head attached to the Louisiana shore. Is that the way I understand you? Before the cut-off was the Newman Tow Head attached to the Louisiana shore?

Q. Yes?

A. Not that I knows of.

[fol. 361] Do you remember the cut-off of 1912-13?

A. In 1912?

Q. The river went through the sand bar there between Newman's Tow Head and the Louisiana main land, didn't it?

A. Well now, for me to recite back the year——

Q. (Interposing.) I asked you whether the river did come through the sand bar between the Newman Tow Head and the Louisiana main land?

A. Yes, sir; it come through up by the head of Duvall's.

Q The question I asked you was did the river come through the sand bar between Newman's Tow head and the Louisiana main land. Just answer that yes or no, and then you may explain it if you want to?

A. I don't want to answer something that I will be sorry for afterwards. I want to tell you the truth. That is all that I want to tell you.

By the Commissioner:

Q. Do you understand the question?
A. I don't understand how he asked me.

By Mr. Brandon:

Q. I asked you if the cut-off of 1912-13 did not come through the sand bar between the Newman Tow Head and the Louisiana main land?

Q. Let me get it straight now, boss. The Louisiana Tow [fol. 362] Head? Did it come through. Let me get it straight.

Q. On the west side of the Newman Tow head?
A. On the west side?
Q. Yes; between that and the main land?

A. This would be like the river. The river would come down here, wouldn't it? You want to know if the river come through here,—he—left this island over here,—left Newman's tow head back over here? That's what you ask me?

Q. Will you answer the question?

A. I will if you will ask me. This was the tow head here, and this is the Mississippi river here, and that would leave the island over here and leave Newman's tow head over here. Here is the Mississippi river on down through here.

Q. The river comes through and leaves the tow head on the east side, towards Mississippi, does it not?
A. Yes, sir.

Q. Then did the Mississippi river go through, in 1912, between the Newman Tow Head and the Louisiana shore?
A. Absolutely.
Q. In 1912?
A. Did it go through in 1912?
Q. Between those two places.

A. Yes, sir—I don't know how you ask me. I can't an- [fol. 363] swer it unless I know how you ask me because I don't know.

Q. Do you understand the English language?

A. Sometimes I can understand the English language and sometimes I can't do nothing. I like to talk out to white people.

Q. You say you have been a roustabout on the river. How old were you when you began rousting?

A. I was about eighteen years old, I guess. I run off and left my mother—was treated hard.

Q. You used to land at Willow Point on the Newman place didn't you when you were on the boat?

A. Yes, sir;—not at Willow Point, but a little above Mrs. Newman's, at Mr. Nicholson's place on the Louisiana shore.

Q. That was before the cut-off of 1912 that you talk about? The sand bar had formed out from the Louisiana shore had it not?

A. Before 1912?

Q. Yes; do you know?

A. I am going to tell you when I find out what you call them years 1912, do you say—1912?

Q. I am not asking you about the year, but whether before that the sand bar started out from the Louisiana shore?

A. Had the sand bar started out from the Louisiana [fols. 364 & 365] shore—had the sand bar started out from the Louisiana shore?

Q. Yes. Tell me. Answer yes or no.

A. I have got to know what you want, and then I has to tell what I know. I want to be right. "Did the sand bar start from the Louisiana shore." Yes, sir.

Q. It did?

A. Yes, sir. The sand bar started out from the Louisiana shore.

Q. It made out from the main shore, did it?

A. Yes, sir.

Q. And the sand bar came out here from the Louisiana shore towards the Mississippi shore?

A. Came out here by here?

Q. Yes?

A. That sand bar?

Q. Started out from the Louisiana shore?

A. In between this river are you talking about?

Q. I am talking about the sand bar starting out from the Louisiana shore.

A. Going out back to Mississippi, here by here.

Q. Towards the Mississippi shore?

A. Yes, sir.

Q. Goes over here?

A. Yes, sir.

[fol. 366] Q. Before the cut-off of 1912 or 1913 how many miles had that grown out from the Louisiana shore?

A. Let me see.

Q. You used to go around there on the steamboat?

A. From the mouth of Chotard——

Q. (Interposing.) I mean how far did it go out from the Louisiana shore—the sand bar from the Louisiana side. How far did it go out?

A. Now, let me see about that question you ask me: Let me see if I know what you mean. Do you mean from the bend around to here, how far it growed out from the way it come back?

Q. I mean from the Louisiana shore. How far did it stick out towards the Mississippi shore? How far did it run out towards Mississippi?

A. Before it hit the Mississippi river over there?

Q. Yes? How many miles?

A. Let me see. How many miles across there. There was a lot of wild geese on there, and I have hunted on there, and it seems to me like about three miles. It looked that far.

Q. Where was the high part of the land on this sand bar that runs out from the Louisiana shore? Where was the highest part of the land? Was it at the end of it at what is called Newman's tow head?

[fol. 367] A. Where was the high part of the land and Newman's towhead?

Q. Was the high part of the bar Newman's Tow Head?

A. Was that the high part?

Q. Yes.

A. Yes, sir; it was higher than it was down below it.

Q. That was the part that you leased from Learned?

A. Yes, sir; that was where I had my hogs, you see.

Q. Did you ever see an island there called Tom Hopkins Island?

A. Yes, sir.

Q. Where was that?

A. Just above Scruggs' Island. Everybody had a bar but me, and I went there—that island was my uncle's.

Q. What island was your uncle's?

A. Tom Hopkins island was my uncle's. I had my hogs in there.

Q. Where was Hopkins' Island?

A. Just adjoining Scruggs' Island, just a little bit ahead of it.

Q. North of it, or south? Up or down stream?

A. North.

Q. Up stream?

A. Yes, sir; like this was Hopkins along here, Scruggs was down here, and it run down near Brunswick.

[fol. 368] Q. The river went sort of around west, did it?

A. No; the river run more north when I went there.

Q. It was up-stream from Newman's Tow head?

A. Yes, sir; coming right down to Chotard.

Q. Now, you said that you were on the river for how many years? How many years did you say?

A. I said about ten years.

Q. As this bar grew out towards the Mississippi shore, what took place on the Mississippi shore?

A. Chotard?

Q. Yes; the main land. Did the river cave?

A. Yes, sir; it caved out—washed out. Chotard run way back. Where Chotard was it went over it way on the other side the river. Purnell had a gin place over there called Cabin Home.

Q. Mr. Butler asked you a question or two about some place where you all landed. I don't know where you landed. Can you tell me?

A. We landed on the Louisiana shore. How do you mean that?

Q. I want you to tell me. I don't know. Did you land on the same place that you leased, this Newman Tow Head, from Mr. Learned?

A. Yes, sir; we went from Chotard—went up to that island.

Q. Now, you mention a lake that was there in 1900. Was [fol. 369] that a lake or a slough?

A. This place what we call St. Francis Chute.

Q. You call it a little lake—you give it the name of St. Francis Chute?

A. It is named St. Francis Chute.

Q. Where is that?

A. Over the other side of the river joining Mrs. Newman's, right down from Mrs. Newman's place, the Newman Tow Head. That was the main Mississippi river when I went there and it was named St. Francis Chute years later.

Q. Did you ever know the Newman Tow Head before the cut-off of 1912?

A. Yes, sir.

Q. Before the cut-off of 1912 the sand bar stretched all the way from the Louisiana shore to Newman's Tow Head, didn't it?

A. All the way down in front of Chotard.

Q. And Newman's Tow Head?

A. From Newman's Tow Head.

Q. In low water you could woulk from the Newman Tow Head to the Louisiana shore on the sand bar could you not?

A. All the way in front, you mean?

Q. Yes; from the Newman Tow Head to the Louisiana shore?

A. Yes, sir; that sand bar has always been pretty well [fol. 370] along there after the river—St. Francis Chute filled up.

Q. St. Francis Chute filled up?

A. Yes, sir.

Q. And you could walk at a low stage of the water,—you could walk from Newman's Tow Head to the Louisiana shore before the cut-off of 1912?

A. You give me questions that I don't understand. I can't answer unless you give me time to understand.

Q. Well, you know where the Newman Tow Head is?

A. Yes, sir.

Q. Because you leased that?

A. Yes, sir.

Q. Now, you testified that there was a sand bar between that connected the Louisiana shore and the Newman Tow Head, did you?

A. This gin was up there.

Q. I will ask you the question again, and will give you a chance to answer the question, as it seems to me that it is simple enough for you to understand. Did you know that a sand bar made out from the Louisiana shore and connected with this Newman Tow Head?

A. Made out from the Louisiana shore?

Q. Yes?

A. And connected with the Newman Tow Head?

[fol. 371] Q. Yes?

A. I could not say.

Q. Well, what do you say?

A. I could not remember whether it was that, but I do know that there has always been a river between us and the Newman Tow Head, the main Mississippi river. We could never get over there without getting in a boat.

Q. Since when?

A. Since when?

Q. Yes?

A. Since 1880 as I can remember.

Q. Do you say there was not any sand bar connected with the Louisiana shore,—connecting the Louisiana shore with the Newman Tow Head?

A. At what year?

Q. I am not talking about the year. At any time. Did you? Let me ask you this. Do you know where the land was you rented from Mr. Learned, where you had your hogs? You know that, don't you?

A. Yes, sir.

Q. That's what I'm calling Newman's Tow Head.

A. That's what you call Newman's Tow Head?

Q. Yes; that was Newman's Tow Head, wasn't it?

A. Yes, sir.

Q. Now, before the river came through the sand bar in [fol. 372] 1912, was not there a sand bar that connected this land you rented from Mr. Learned with the Louisiana shore?

A. From the Mississippi shore connected with the Louisiana land?

Q. Before the river came through there?

A. Was the river connected with the Louisiana land?

Q. Just tell me, yes or no.

A. The river run down in front of it and come around there in the bend. They could not get on the island without a boat and could not get across the river.

Q. I am talking about between Newman's Tow Head and Louisiana. Was there a sand bar between Newman's Tow Head that you rented, and the land on the Louisiana side?

A. Was there land between that?

Q. Yes; before the cut-off? Of course, after the cut-off I know that the river was there.

A. You mean that was before the cut-off?

Q. Yes?

A. Was there land between there?

Q. Yes; a sand bar and so forth that you could walk from the island to the Louisiana shore?

A. Let me see—the island—you say was there land between the two—between the island—just like this chute was here (indicating), here was the land on this side, and land on that side. Is that what you ask me?

[fol. 373] Q. I have asked you the question. Now, go ahead and answer it. Answer it in some way.

A. That is what I am trying to get at. I want to answer you in the right way. Say this is the chute like that, and this is land over here, and this land over here, and here is the water—a stream of water in between it. That water would split this.

Q. Between?

A. Just split this open.

Q. Between what?

A. Between Louisiana and Mississippi.

Q. When was that?

A. That was, let me see when was that. That was in nineteen—I married in 1900. I will never forget that—the time I married. I married in 1900, and two years later would be what—what would be two years?

Q. Go ahead, you are talking.

A. Two years earlier, that would get the number of years—about two years later—two years before 1900.

Q. What was?

A. When that stream of water was coming through there.

Q. Where?

A. Between Chotard and Willow Point.

Q. Between Chotard and Willow Point?

[fol. 374] A. Between Mississippi and Louisiana is what I'm trying to get at.

Q. I am not asking you between Mississippi and Louisiana, not any of my questions.

A. That's what you say, ain't it? I can't say that it is Newman's point. I calls it Mississippi.

Q. It don't make any difference to you whether it is Newman's Point, or Mississippi, or Alabama, or what. I am asking you whether, before the river came through there and made the cut-off in 1912, the end of that point there that you leased from Mr. Learned, and which has been called Newman's Tow Head, was or was not connected, by sand bar, with the Louisiana shore. Answer that question yes or no.

A. The Louisiana shore?

Q. Answer it. I appeal to the Commissioner to make him answer the question.

A. The water came in——

Q. I just asked you that question. Answer the question I asked you and then you can make any explanation you desire, but I want you to answer the question yes or no.

A. What is the question?

(Question read by the stenographer.)

A. You have done swore me and I am going to tell the truth.

Q. Read him the question again.

[fol. 375] (Question read by the stenographer.)

A. Connected with the Louisiana shore?

By the Commissioner:

Q. Answer his question.

By Mr. Brandon:

Q. Yes; was it or not?

A. This land in here connected with the Louisiana shore? Do you mean could not get across the river?

By the Commissioner:

Q. Answer the question. Was it or not?

A. Let me see now——

By the Commissioner (interposing):

Q. If you don't know say so.

A. I know it, but I can't get the memory.

Q. Well, then think. We will give you time to think, all you want. Now, was it or not?

A. No, sir; it was not connected.

Q. All right, now go ahead and explain, if you want to.

By Mr. Brandon:

Q. Why is it so hard to answer the questions I ask you and so easy to answer the questions asked you by counsel on the other side?

By Mr. Henry: We shall object to that. It is an argu- [fol. 376] ment he is starting with the witness.

By the Commissioner: Yes; I hardly think that is a proper question.

By Mr. Brandon: Very well, that is all I desire to ask him.

Redirect examination.

By Mr. Butler:

Q. On which side of the river is the land which Newman's Tow Head is now situated? You know as Newman's Tow Head?

A. Where it is now?

Q. Yes.

A. The line between which?

Q. On which side of the river is the property you know as Newman's Tow Head? On the Louisiana side or the Mississippi side?

A. On the Louisiana side.

Q. That is the present river?

A. Yes, sir.

Q. Did you all ever know, or call the island on which you had your hogs, by the name of Newman's Tow Head? Did you ever call it that or not?

A. No, sir.

Q. Then, when you are talking about Newman's Tow Head you are talking about land now on the Louisiana side [fol. 377] of the river from here?

A. From where we got in the boat at?

Q. Yes; across the river?

A. Yes, sir; across—away over on the other side.

Q. What is the land over there where you pointed out the lake and where those big trees we measured—what do you call that?

A. I calls it—I would call it Mississippi.

Q. I am not talking about what state.

A. I calls it home then. That's where I live at.

Q. What is it known as?

A. What's the name of it?

Q. Yes?

A. I calls it St. Francis Chute.

Q. This plantation around the point, what do you call that, where Newmans Tow Head is—what is called Newman's Tow Head?

A. What we call Newman's Toyw Head is way up about where we first got out of the boat. You know where we got out of the boat at the sand bar.

Q. This side or the other side of the river?

A. The other side.

Q. Of the present river?

A. Yes, sir.

Q. What do you call that where you put your hogs?

[fol. 378] A. What do I call that?

Q. Yes?

A. I just call it an island.

Q. Is that the island you refer to as Scruggs' Island?

A. Yes, sir; I just figured it come back from Scruggs' Island. The Sprague sunk four barges there, coal barges.

Q. I don't care about that.

A. I just wanted to tell you.

Q. That is all.

Recross-examination.

By Mr. Dale:

Q. You say that you figured that it came back from Scruggs' Island, the island where you put the hogs?

A. That is what I was figuring when I went over there, when I went there to live there.

Q. Scruggs' Island disappeared, did it?

A. Not all of it. A portion of it did. At low water there would be some of it there. At high water there would not be none of it there. There would not be no land where I lived at.

Q. At high water there was none of Scruggs' Island left?

A. No, sir; none there where I lived.

[fol. 379] Q. And only some at low water?

A. What?

Q. And there was only some of Scruggs' Island left at low water?

A. Yes, sir.

Q. The water had to be very low for any of it to appear?

A. I think 35 feet on the *guage*—25 feet would put plenty of it out there.

Q. Now, the Island which has been called Scruggs' Island, that's the same island you leased from Mr. Learned?

A. I guess it is. I can't tell you.

Q. You don't know?

A. No, sir.

Q. Now, there is a piece of land, an island here, that you have denominated as Scruggs' Island?

A. Yes, sir.

Q. That you claim is Scruggs' Island?

A. Yes, sir;—you say could I swear to it as Scruggs' Island?

Q. You say there is an island called Scruggs' Island?

A. Yes, sir.

Q. Did you lease that island, or a part of it from Mr. Learned?

A. I leased it from Mr. Capt. Reed. He brought the lease [fol. 380] to me.

Q. For that island?

A. Yes, sir.

Q. All the same, the island you call Scruggs' Island is the one you leased from Mr. Learned as the Newman Tow Head?

A. Yes, sir; I thought that is what it was when he came to me.

Q. Was it not exactly the same property?

A. Yes, sir;—just the same ground down there?

Q. Yes; regardless of its name?

A. Yes, sir.

Q. Prior to 1912 did you ever walk over from Scruggs'—what you call Scruggs' Island and the same property you subsequently leased from Mr. Learned, to the Willow Point property in Louisiana?

A. Since 1912?

Q. No, before?

A. Before 1912?

Q. Yes?

A. And walked to Willow Point?

Q. Yes?

A. Well, that would be the island, the way the lease read. You see that would be the lease. It read "Willow Point."

[fol. 381] Q. I am not asking you about the way the lease read?

A. I walked to the island since then from the lower part.

Q. Before 1912 you walked across to that Island from Willow Point?

A. Yes, sir; I walked from the Mississippi shore to that island.

Q. I am not asking you from the Mississippi shore. Do you call the island the Mississippi shore?

A. No, sir; I say that I went over it from the Mississippi shore, over on the island, walking.

Q. I did not ask you in regard to the Mississippi shore. Get that out of your mind.

A. How's that? What's that. I didn't understand.

Q. I say for you to get that out of your mind.

A. All right.

Q. I didn't ask you that. Pay attention to my question. Now, this island that you call Newman's Tow Head that you leased from Mr. Learned, that is the same island you all call Scruggs' Island. I asked you whether you walked from that island across to the Louisiana shore?

A. No, sir.

Q. You never did?

A. No, sir.

[fol. 382] Q. Did you ever know of anybody else doing it?

A. Not that I know of.

Q. Could you at any time have done it?

A. Walked to the——

Q. Louisiana?

A. Walked to the Louisiana shore from that tow head?

Q. Yes?
A. No, sir; not that I know of.

By Mr. Brandon:

Q. You also leased some land from Mr. Learned in Issaquena county, on the Mississippi main shore, did you?
A. I leased his land—Mr. Learned—down in Issaquena county. That is what Mr. Charley Henry told me when he came up there for Capt. Reed.

Redirect examination.

By Mr. Butler:

Q. That land on this side of the river is called Scruggs' Island, and the land on the other side of the river is called Newman's Tow Head—was it both sides of the river?
A. Yes, sir; this same lease. That is what he told me by word of mouth, to keep everybody off of it.

(Witness excused.)

[fol. 383] Etna J. Albrittian, called as a witnes on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Butler:

Q. State your name?
A. Etna J. Albrittian.
Q. Where do you live?
A. At 526 North Jefferson.
Q. Jackson, Mississippi?
A. Yes, sir.
Q. Mr. Albrittian, are you familiar, in a general way, with the lands and territory involved in this litigation, the State of Louisiana against the State of Mississippi, in the vicinity of Chotard Landing?
A. Yes, sir.
Q. When did you first know anything about this vicinity, Mr. Albrittian?

A. Well, in July, 1912, I made my first trip up there to look it over.

Q. How did you go?

A. By steamboat from Vicksburg. I think I got off at Duvall's.

Q. Duvall's Landing?

A. In Issaquana county, yes, sir.

Q. At the time you went over there in July, 1912, speak-
[fol. 384] ing generally, where was the main boat channel of the Mississippi river, with reference to the Island known as Tullos Island on the survey of Mississippi of 1823, a copy of which is marked Exhibit X, filed October 5th, 1926, which same island was later known as Island No. 98?

A. Well, we traveled to the east of Tullos Island. The steamboat went into this chute here—left the island to the left of us.

Q. That was the route your boat took?

A. Yes, sir.

Q. Do you know whether or not, at that time, in July, 1912, there was water running between the island and the Louisiana shore side?

A. Yes, sir; it was there then.

Q. Now then, did you go over any part of the land in 1912?

A. Yes, sir.

Q. What part did you go over?

A. I went over the island part.

Q. What sections was that?

A. Well, that would include sections 20, 21,—20 and 21, and a small part of 28.

Q. At that time was the water flowing on both sides of that land you went over, referred to as the island?

A. Yes, sir.

[fol. 385] Q. Now, when did you next visit this property, Mr. Albrittian?

A. Well now, I don't know about the date. I have been up there several times. The next definite date that I can fix would be about the fall or early winter of 1923, but in the meantime I had been there several times. I can not fix the dates.

Q. Now, do you claim any portion of the lands involved in this litigation, and if so, state generally what portion you do claim, with reference to sections?

A. Well, my son and I hold title to sections 20 and 21, and Lots 2, 3 and 4, and the South half of Lots 10 and 28; all section 29; all 30, and other lands surrounding Tullos Island.

Q. As it existed in 1823?

A. Yes, sir; as it existed in 1823.

Q. I will ask you whether or not you are familiar with the locations on the ground?

A. Yes, sir.

Q. Of the lands which you mention as claiming and particularly that embraced within the territory,—within the boundary of the island as it existed in 1823, as shown on said Exhibit N?

A. Yes, sir; I am familiar with the lands,—with the island, especially, because I have investigated them closely [fol. 386] since we made a purchase a few years ago.

Q. Now, I will ask you if you know where Section 21 is, situated on the ground as it exists there today, as located by the surveyor's marks and sticks?

A. Yes, sir.

Q. What is the character of the growth on Section 21, particularly with reference to Lot 5, shown on said Exhibit N?

A. Well, that is cottonwood and willows growing there.

Q. Well, will you state, with Exhibit N before you, about where this southern and western line of the cottonwood timber is, by reference to Lot numbers, or fractional lot numbers that it runs across, as the timber exists now?

A. In lots 3, 4 and 5, in Section 21, there is a belt of large cottonwood and willows, and it runs—it goes up to the river on the west side, and on the east side it is almost exactly parallel with the old shore line.

Q. The old chute shore line?

A. The chute shore line.

Q. How large is that cottonwood growing in that vicinity, Mr. Albrittian?

A. Well, it is 24 to 26 inches in diameter.

Q. Where is the present river with reference to Lots 5, [fol. 387] 4 and 3?

A. Well, according to the survey——

Q. (Interposing.) Section 21 I am talking about, unless otherwise designated?

A. The surveyor set a stake on the river bank at three quarters of a mile. That would be the river bank right there.

Q. Between what?

A. Between there on the boundary line between sections 21 and 28.

Q. At the southwest corner of Lot 4?

A. Yes, sir; the southwest corner of Lot 4.

Q. Of Section 21?

A. Yes, sir.

Q. Then which way does the river run today?

A. The river runs in a northwesterly direction, and stages on out of section 21 about half way between the northeast corner and the southwest corner of Lot 3.

Q. How high is that river bank alog the point you have juest described, from the ordinary stage of the water in the river?

A. Well, three years ago that bank was about 25 feet high. I have seen as much as 25 feet of the bank, but since that time it has filled in to some extent, and it is now only about fifteen feet up.

[fol. 388] Q. At the time that you saw this bank 25 feet high what was the character of the soil extending up through that territory you have just described?

A. That was clay.

Q. Now, what with reference to the timber immediately east of Lot 5 of Section 21, as compared with the timber west of that point?

A. The old channel was clearly discernable across that, and east of that is small willows.

Q. Is or not that old channel clearly discernable there today, of the old chute?

A. Yes, sir; from this point where the present river crosses this old channel it is in Lot 4, Section 28. The old channel is clearly discernable all the way around back to the river.

Q. Now, is there or not any lakes now existing in the old chute or channel?

A. Yes, sir.

Q. And where are those located on the ground?

Q. One on the north end. That would be—well, that lake is about north of Lot 1 in Section 20, and then there is another smaller lake about northeast of Lot 2, in Section 21.

Q. Now, are you also familiar with the lands which originally composed a part of Tullos Island in 1823, as shown [fol. 389] by Exhibit N, and which now lies to the west of the river?

A. Yes, sir.

Q. Now, I refer to Exhibit F to the bill of complaint in this case, and will ask you if you have an exact copy of that map before you?

A. I think it is; yes, sir. It is Chart 47 of the Mississippi River Commission.

Q. Now, as I understand it, Mr. Albrittian, in 1823 the main channel of the Mississippi river run to the west of Section 30 involved in this litigation?

A. Yes, sir; according to the map it did.

Q. Now, I will ask you to refer to Chart No. 47 of the Mississippi River Commission survey, and state what are the physical conditions there on the ground now, in the vicinity of Section 30, of Mississippi, and extending from there on in a northeasterly direction towards Section 20 in Mississippi?

A. Well, the physical condition of the land today, or was when I was up there—I was at Henderson on the 21st day of October of last year, and the river stage was 38.9 at Vicksburg, and the water was backed out to here.

Q. Backed out to where. You see you indicate something that does not go in the record. Call it off in reference to sections?

[fol. 390] A. Well, as a matter of fact we went to Henderson and wanted to get off on Section 30, and we found the old channel full of water, and we thought that we could go north,——

Q. What do you mean by "old channel?"

A. I mean the channel of the river of 1823. We thought by going north up the old river bed that we could surround the water that was backed out in the old river channel. But we did not. We found water all of the way out, and we followed the old river channel clear to where it goes into the river at the north end.

Q. You mean where the old river channel goes into the bed of the river channel?

A. That is it; yes, sir, and the water was coming out from the present river into the old river channel of 1823. Now about a half a mile west—I mean south of the present river down the old river channel of 1823, we came to an open space and we could see across the water. The water was about 200 yards wide at that point, and there was a well defined bank on the east side of it.

Q. And what was the character of the bank on the west side of the old channel, and the side on which you were walking?

A. Well, after a distance of a mile north of Henderson there was no discernable bank line on the west.

[fol. 391] Q. How was it down at Henderson?

A. At Henderson the levee went right up the edge of the old river channel on the west side.

Q. And what was the stage of the river at the time you were there?

A. It was 38.9 on the guage at Vicksburg.

Q. Do you know whether or not that is an accepted guage to determine the stage of the river in this territory?

A. Well, I think it is.

Q. Do you know a place on this Government chart 47 that is known as St. Francis Chute?

A. Yes, sir.

Q. How is that delineated on the chart?

A. It is not delineated on the chart. That is only a local name, and it applies to the old river bed of 1823.

Q. What does this Chart 47 show as to elevations and so forth and as to the existence of water and so forth along this old channel of 1823?

A. Well, down next to Henderson the old channel shows—I can't read those figures.

Q. What does that show?

A. I can't see that.

Q. What is that?

A. That shows the water there.

Q. Water?

[fol. 392] A. Yes, sir; the old channel shows about ten feet lower than the land on either side.

Q. To the west of Section 31 what does the chart show?

A. Well, it seems to show a low place. It is not marked water, but it is not shown to be timber, and the physical situation is that it—this is, in fact, a low place with just bushes on it—small bushes.

Q. Around this low place marked "water" down near Henderson's Point, I see the elevation lines to the west of it, 90 to the west of it, 90 to the east of it, and then west of there, beginning at 95 and 100, and up on the bank beyond the levee, 105. Does the physical indications there on the ground at this time indicate that there was a difference in those elevations there at that point?

A. Clearly. There is a clearly defined channel. I have been across there plenty of times, and there is a clearly defined bank line along here.

Q. Along where?

A. Along section 36 and 31, along in there. I don't know positively where it was because it had not been surveyed when I crossed it, but there is a bank line along in that section, three or four feet high.

Q. Now, commencing at Henderson's Point this Chart [fol. 393] No. 47 shows the elevation of the first point north of Henderson's Point, of 100, and then west of the northeast corner of Section 36 this shows an elevation of 100, and then west of Section 30 it also shows an elevation of 100 for two points, and then immediately west of those elevation marks is this white place on the map?

A. That is a low place there, where this white line is, showing that it is low land, and there is water there lots of times, and I have crossed there and watered a horse right at that place—just about there.

Q. Where is that on the map?

A. That is about opposite a point of Section 30, or about where, if the section line missed 30—if 30 was extended to the range line it would be about where the line struck the range line between Range 8 and Range 9.

Q. Now, I notice on Chart 47, immediately west and running through a part of Fractional Section 30, a point on which the elevation is given as 85, 90 and 95. To the west of that is an elevation of 110 and 105; to the east of that is an elevation of 110 and 105. Now, I will ask you if you

know the situation on the ground as it exists there today at this point immediately west of Section 30, and in the vicinity of these elevations which are marked and shown on chart 47?

A. Well, there is a channel leaving the present river at [fol. 394] this point, which would be about on a line with—boundary line between sections 20 and 29 if extended west to the old river bed of 1823. There is a channel running almost south through the old river bed, cutting a corner of the point of Section 30, on through section 31, to the present river below. Then in the center of the old river bed, at a point about opposite section 30, there is a channel not so deep. That water when we were there was running across this high ground. It was just about the center, or a little east of the center of the river bed of 1823, running from this channel across to this low place and on down to Henderson.

Q. Where was the chute of 1823 on the Mississippi side of Tullos Island with reference to Section 30?

A. Well, the chute run between section- 30 and 31.

Q. Now, what is there on the ground there today, and what is the character of the ground there today at this point opposite section 30 where the old chute was on the map of 1823?

A. There is an old channel clearly discernable. There is a bank about four or five feet high, almost the same width—just about two chains wider than it was in 1823.

Q. Now, do you remember going over there with a darky named Towns, or Townsend, when you made a survey?

[fol. 395] A. Yes, sir; I remember going over there several times with him.

Q. He has testified as having pointed out to you several points in the vicinity of Section 30, and some place where a hatchet was lost, and some trees measured as being a lake in 1900.

A. Well, that hatchet was lost just about the center of this old channel, and just west of the line between Sections 30 and 29, and 31 and 32.

Q. Did he actually point out to you on the ground the place where the old lake existed in 1900?

A. Yes, sir.

Q. Where was that old lake with reference to the chute to the east and south of Tullos Island as it existed in 1823?

A. That lake was in that chute.

Q. I see. Now, Mr. Albrittian, did you examine the character of the growth growing on the land that was embraced within section 30 on the map of 1823?

A. Yes, sir.

Q. What was the character of that growth?

A. Well, there was—do you mean in variety or the size?

Q. Both?

[fol. 396] A. Well, there was cottonwood, willow and oak and sycamore and dogwood, and the sizes run from, that is, in the cottonwood and sycamore—all of the large growing timber—it runs from sixteen inches in diameter to more than three feet in diameter.

Q. Do you recall of ever having measured the circumference of certain cottonwood trees in that vicinity?

A. Yes, sir.

Q. Do you know what they measured?

A. I remember that one measured ten feet and five inches in circumference.

Q. On what part of Section 30 were those particular trees that you measured?

A. Well, they were just east, maybe, of the boundary line between sections 29 and 30, and about five chains north of the intersection of Sections 29 and 30 and 31 and 32.

Q. Where were they in reference to the chute as it existed in 1823?

A. They were just about three chains north of the bank of the chute.

Q. And in what part or portion of the section? You stated that, but I didn't get your answer—the western or the eastern portion?

A. Southeastern portion.

[fol. 397] Q. Of fractional section 30?

A. Yes, sir.

Q. Now, what is there on the ground today making out from Section 30, as located in 1823, towards the present river? Do you remember where we landed there?

A. In the section; yes, sir.

Q. On the west side of the river what was the character of the soil of the ground between there and the timber line of Section 30?

A. Well, there is a belt of cottonwood timber between—in the western part of Section 29, and it extends on down into section 30.

Q. What was there—what is there between the timber line and the present western edge of the water in the river?

A. Well, there is a sand bar between the timber line and the present——

Q. (Interposing.) How extensive is that sand bar, Mr. Brittian?

A. Well, I should—I would think it is probably a quarter of a mile wide from the timber line to the water line.

Q. Do you know where the main channel of the river is there today with reference to what was formerly known and designated on the map as Tullos Island?

[fol. 398] A. Yes, sir.

Q. Where is it with reference to that?

A. The present river crosses Tullos Island, taking a part of section 20, a part of section 29 and a part of section 28, and a small part of section 21.

Q. Now, how is the river located on the ground today as compared with the flow of the water you have mentioned west of the island in 1912 when you went up there and made this trip in the boat, and also inspected the island?

A. Well, the river as it flows today is almost identically in the same place as it was in 1912—where the water was in 1912.

Q. Going back now for a minute to Section 21 about which you testified as the shore line and cottonwood timber and so forth, what is the largest timber on the island or peninsula as it exists today with reference to section 21—the timber on that island?

A. In Lot 3, that part of Lot 3 that is not in the river, and a part of Lot 5—the largest timber would probably be in Lot 3 and Lot 4 in Section 21.

Q. That is the largest of all of that timber on that island?

A. Yes, sir; in 21. Lots 3 and 4 and a part of Lot 5 and a small part of Lot 4 in Section 28 is all big timber.

Q. That is larger than the rest of the growth on the [fol. 399] island, is it?

A. Yes, sir.

Q. Is there anything else that I have not asked you about that you want to make a statement of, or with reference to the character of that land, or the island, the timber, the channel and so forth and so on?

A. Well, I would say this: From the character of the land and the growth, and the channels there to show, I am convinced——

By Mr. Dale: We object to the witness stating his opinion. That is a matter to be drawn by the Court, and the witness should be allowed merely to state the facts.

By the Commissioner: Yes, sir; let him state the facts.

By the Witness: That is all I have to state, is facts.

By Mr. Dale: Certainly, we do not object to your stating the facts, but we object to you stating your opinion.

By Mr. Butler: That is all. You may cross-examine.

Cross-examination.

By Mr. Dale:

[fol. 400] Q. You mention the old chute of 1823, and you have mentioned several old chutes. You don't know, of your own knowledge, that any chute exists there now that existed there in 1923, do you, Mr. Albrittian?

A. The survey shows they are in the same places they were in 1823.

Q. The survey merely shows they are in about the same location, but whether that chute had filled up and another *one* would simply come there at a later date, you can't swear to of your own knowledge?

A. I would not attempt to say, for I have not been living that long.

Q. You never was in that vicinity until July, 1912?

A. Oh yes, sir; but I was not making any special study of the situation.

Q. I just asked you the question if you were in the vicinity of the land in litigation prior to July, 1912?

A. Yes, sir; I was.

Q. You were there before that time?

A. Yes, sir.

Q. When?

A. Well, I would not,—I don't remember the date because——

Q. (Interposing.) You never noticed anything in the [fol. 401] vicinity before that time?

A. No; I did not make a special study of the situation prior to that time.

Q. You did not make a study of the situation at all prior to July, 1912?

A. No, sir.

Q. And therefore, your information or knowledge in regard to this matter would be limited to a period no further back than July, 1912?

A. Well, I studied the records and maps made prior to that time.

Q. Any other information you might have had or have prior to 1912 was drafted from maps?

A. Maps and records; yes, sir.

Q. Now, you spoke of Tullos Island. You don't know, of your own knowledge, whether Tullos Island entirely caved away or not, do you, Mr. Albrittian?

A. Well, of course, I was not there watching it all the time, but there was timber there and there was clay soil there that shows by the character of the land and timber that it was on land that I know did not cave.

By Mr. Dale: That answer, if the Court please, was not responsive to my question, and therefore I object to it.

Ruling reserved.

[fol. 402] Q. That is your opinion of it, that it is the same land. In other words, that is the conclusion you have come to from your examinations?

A. It is the same character of soil and the same character of timber there is east of the present river on land that is known never to have been in the river.

Q. Now, in reference to the character of the timber, the largest tree you found on the island, which is in the location of where Tullos Island was, whether it was Tullos Island or some other island, was ten feet and five inches in circumference?

A. That is the largest one that I measured. I saw a larger one than that but it was before I had the survey made and I could not designate it by section number.

Q. Then, if you did not measure other ones how could you tell it was larger?

A. Easy enough.

Q. Are you trying to show that this timber is larger on the island or it is smaller?

By Mr. Butler: He is not trying to show anything. I don't think that is a fair question.

By the Witness: I am trying to answer questions merely.

[fol. 403] By Mr. Dale:

Q. Are you interested in this litigation?

A. Certainly I am.

Q. Did you go there to hunt small trees or large ones?

A. I have not been hunting any trees at all.

Q. Why did you measure this cottonwood?

A. Just because I wanted to see how big it was.

Q. You did not measure it for the purpose of using it as evidence in this case?

A. I measured it because I wanted to see how large it measured.

Q. Yes, sir; my question was, you did not measure it for the purpose of using it as evidence in this case? Or were you hunting for those trees just as a mere matter of curiosity?

A. I measured it as a matter of information.

Q. I will repeat the question. Did you or not measure it for the purpose of using the measurement as testimony in this case?

A. Not purely; no.

Q. Did you do it at all for that purpose?

A. I had not had an investigation sole in mind.

Q. Then, if you did not measure it for the purpose of using it as evidence in this case, why did you measure it?

[fol. 404] A. I told you I measured it to see how big it was.

Q. Just simply to see how big—as a matter of idle curiosity to see how big it was?

A. And for information, as I told you.

Q. Just for general information. Do you go all over Mississippi territory generally to measure trees just for information?

A. Well, I do a good many—a good deal of the time, because I have been interested in timber and in timberlands for a good many years.

Q. And on some land that you are interested you measure the circumference of trees, do you?

A. Sometimes I do, sure.

Q. Where did you ever do that before on land that was not in litigation?

A. I did it once, for example, in Jefferson county.

Q. Mississippi?

A. Yes, sir.

Q. Where did you do it again?

A. Down on Pearl River, in Rankin county.

Q. And where again?

A. Well, I will not say right now. I don't recall any other places right now.

Q. Now, you make it a purpose to go around measuring trees just out of curiosity?

[fol. 405] A. I am a timber estimator, and that is one thing I do. I do a great deal of it.

Q. Does a timber estimator usually measure the circumference of trees?

A. They frequently do.

Q. Is that the custom or rule of a timber estimator?

A. Well, it is one method of ascertaining the number of board feet.

Q. Another method would be to cut the tree down and saw it up?

A. But you can't always do that.

Q. A timber estimator does not do that?

A. He does not cut it down.

Q. They generally measure the circumference, do they?

A. Sometimes they do.

Q. I am not asking what just one will sometimes do, but what will they do as a rule?

A. Well, they sometimes do it.

Q. Do you refuse to answer the question whether as a rule they do it?

A. I will not attempt to answer for another man, and tell what he will do. I can't tell what another man will do.

Q. Are you a timber estimator?

A. Not professionally; no.

[fol. 406] You don't know whether a timber estimator measures the circumference of trees or not, do you?

A. I have seen them do it.

Q. But you refuse to answer my question as to whether it is in general use?

A. I am not going to speak for others, for I don't know what they do, as a general rule.

Q. Why didn't you measure the small cottonwood just like you measured the big one?

A. One reason was I had no tape line with me when I saw the big one.

Q. Where was the big one—that big tree you are talking about?

A. It was about the point of Section 29, but the land had not been surveyed at that time and I could not give the definite location.

Q. Do you think you could find it again?

A. I know I could.

Q. How much larger was it?

A. I would say that it was four feet in diameter.

Q. Did you find that since you measured this ten foot five inch cottonwood in circumference, or before?

A. Before.

Q. If you found it before why didn't you go there and get the measurements?

[fol. 407] A. Because we were walked down, that is why.

By Mr. Butler: I will testify to that myself, Judge.

By Mr. Dale:

Q. Did you measure any oak?

A. No, sir.

Q. What was the diameter of the oak you found?

A. Well, as I remember, about sixteen to eighteen inches.

Q. Where were those located?

A. On the boundary line between Sections 29 and 30.

Q. How many of them did you find?

A. I would not attempt to say. I did not make an effort to count them.

Q. Were they a few or large in numbers?

A. Just a few.

Q. Just a few?

A. Yes, sir.

Q. The largest ones you saw were approximately sixteen inches in diameter?

A. Sixteen or eighteen. I was not paying particular attention as to their size.

Q. How far from the ground?

A. Well, I would say two feet from the ground.

[fols. 408 & 409] Q. How far from the ground did you measure this cottonwood that measured ten feet five inches in circumference?

A. About two foot from the ground.

Q. Was that a swelled butt tree or not?

A. No, sir.

Q. How many sycamore trees did you see?

A. I would not attempt to say how many. There was not so many.

Q. Not many sycamores?

A. Not so many, but I saw some. I don't remember how many.

Q. What was the largest sycamore you found in diameter?

A. I did not pay any attention to its size at all.

Q. Was it more than sixteen inches in diameter?

A. Probably not.

Q. What was the size of the dogwood you found in there —little scrubby growth?

A. Yes, sir; it was about, as I remember it, about four inches in diameter.

Q. How many dogwood did you find?

A. I only noticed one.

Q. How many sycamore?

A. I did not notice. I did not count them.

[fol. 410] Q. And you did not notice how many Oak?

A. No, sir.

Q. Isn't it a fact that it was just a scrubby growth of oak that you found?

A. No, sir.

Q. Wasn't it now what you would call a scrubby growth?

A. It was a healthy tree, as I remember it,—not any scrub oak at all.

Q. You spoke of a survey being made there on your direct examination. Do you know when that survey was made?

A. Yes, sir.
Q. When?
A. In September of 1924.
Q. Who made that survey?
A. Hull—W. M. Hull.
Q. Who is W. M. Hull?
A. He is a surveyor who lives in Rolling Fork. He lived there at that time.
Q. Rolling Fork, Mississippi?
A. Yes, sir.
Q. Do you know whether he is a licensed surveyor?
A. I don't know about that.
Q. Other than from what you have mentioned about the growth of the timber, and there being clay on the soil, and [fol. 411] the elevation of the soil, you can't tell whether Tullos Island, or Island 98, as it existed originally, had all caved away or not, other than it is your opinion that it did not, from those facts?
A. Well, there are not any indications that it did, taking the facts as they are.
Q. You don't know. There is nothing to indicate to you—there are no facts you could see outside of that, that it did not?
Q. Well, of course, I don't know, because I have not been living all that time, but every indication is that it did not.
Q. Well, you have no knowledge of that except that which you have drafted—no personal knowledge except that which you have drafted since July, 1912?
A. That is all.
Q. You tstified that you owned a part of the land. When did you buy it, Mr. Albrittian?
A. Well, we bought some in 1923 and some in 1924, and I think we bought some since that.
Q. From whom did you buy it?
A. The State of Mississippi.
Q. It was sold at tax sale?
A. Forfeited to the state.
Q. And you bought it from the state.
[fol. 412] A. We bought it from the state.
Q. You don't know for what years it purports to have been forfeited, do you?

A. Well, we have a record of it, but I don't remember the dates.

Q. You don't know what year the sale was made to the State do you?

By Mr. Sharp:

If you will pardon me, it is in that exhibit there. You will find it in that exhibit.

Q. You have been paying taxes on the land that you purchased since 1923—since the purchase?

A. Yes, sir.

Q. Do you know, of your own knowledge, how long prior to that time, before any taxes had been paid on it?

A. Well, they paid all the time, according to the record, up to the time that they were forfeited to the State. After they had been forfeited to the state nobody paid taxes on them until we bought them.

Q. I think that is all.

(Witness excused.)

[fol. 413] By Mr. Creekmore: We offer a certified photostatic copy of a map of Issaquena county, from a survey compiled under authority of the State Legislature, by act approved May 10, 1871, and certified to by R. D. Moore, Land Commissioner, which we will ask to be marked Exhibit V on behalf of the defendant.

Document handed to the stenographer, and marked Exhibit V for the defendant.

By Mr. Creekmore: And in connection with Exhibit V we offer an enlargement of the same map, being a photostatic copy, and will ask that it be marked Exhibit V-1 on behalf of the defendant.

Document handed to the stenographer and marked Defendant's Exhibit V-1.

[fol. 414] At this point, by agreement, an adjournment is here taken until January 19, 1927.

[fols. 414½ & 415] IN THE SUPREME COURT OF THE UNITED STATES

VOLUME THREE—TESTIMONY TAKEN AT JACKSON, MISSISSIPPI, IN THE SENATE CHAMBER OF THE NEW CAPITOL BUILDING, JANUARY 19TH AND 20TH, 1927

[fol. 416] Jackson, Miss., January 19, 1927.

Met pursuant to adjournment heretofore noted.

All parties interested present, when and where the following proceedings were had:

The complainant, having reserved the right to offer and introduce further testimony, then and there offered the following:

By the Complainant

E. T. PURNELL, called as a witness on behalf of the complainant, was sworn and testified as follows:

Direct examination.

By Mr. Dale:

Q. What is your name?

A. E. T. Purnell.

Q. When were you born?

A. I was born in 1866, on the 11th of February.

Q. That would make you about sixty-one?

A. I will soon be sixty-one.

Q. Are you acquainted with the vicinity of Albemarle Bend, in Mississippi?

A. Yes, sir.

[fol. 417] Q. The point near the point in litigation in this case?

A. Yes, sir; I know it pretty well.

Q. You are pretty well acquainted with it?

A. Yes, sir.

Q. Did your father live in that vicinity, and did you ever live in that vicinity also?

A. Father moved from Rankin county in 1867 to land owned by the Peebles Estate of South Louisiana, and after being there and opening up a good deal of the land, the

estate sold the Mississippi body of land, the main body of land, and deeded father 400 acres of land above the Island 98.

Q. Did your father move to that place?

A. Yes, sir.

Q. What year did he move there?

A. We moved up there in 1880.

Q. Now, prior to the time that you moved to the Purnell place opposite Island 98, where did you live just prior to that time?

A. We lived on what — known as the Belleview Plantation owned by Dr. W. G. Kiger.

Q. When did you move to Belleview Plantation, Mr. Purnell?

A. In 1867.

[fol. 418] Q. How long did you live on the Belleview Plantation, if you recall?

A. From 1867 until 1880.

Q. From 1867 until 1880?

A. Yes, sir.

Q. And you moved immediately from the Belleview Plantation to the Purnell Plantation?

A. Yes, sir.

Q. How far above the Belleview Plantation is the Purnell Plantation?

A. There is the Chotart Plantation in between. I don't know exactly how wide it is.

Q. Who do you say the Belleview Plantation was owned by, Mr. Purnell?

A. When do you mean?

Q. Who?

A. I say at what time do you mean?

Q. Well, when you left there?

A. It belonged to the Peebles Estate of South Louisiana.

Q. Did any one else afterwards acquire it?

A. Dr. W. D. Kiger.

Q. Will you look at the Map marked Exhibit C, Sheet 17, of the Mississippi River survey, and state whether or not the place marked "W. D. Kiger" on the map, just below Ingomar Post office on same is what you call Belleview Plantation?

[fol. 419] A. I am not much on those maps now.

Q. It is just below Chotard——

By Mr. Henry (interposing): Wait a minute. He says that he is not much on maps.

By Mr. Dale:

Q. Just put down what he says. Not much on maps. Now, this is Chotard Landing.

By Mr. Henry: Let him find it.

By Mr. Dale:

Q. Without regard to the map, do you know where Chotard Landing is with reference to Belleville Plantation?

A. Just north of it.

Q. Just north of it?

A. Yes, sir.

Q. Can you find it on the map here?

A. I can find it where it says it is. It is there; yes, sir. That is it there.

Q. Now, this place marked on the map, "Dr. W. Kiger," just below Chotard Landing, is that or not the Belleview Plantation?

A. As far as I know it is; yes, sir. There is no other plantation in there whatever.

Q. What is your father's name?

[fol. 420] A. William Purnell.

Q. How was it spelled?

A. P-u-r-n-e-l-l.

Q. Where did your father's place lie on the Mississippi river with reference to the Maj. Higgins place?

A. Adjoining it on the south.

Q. The place adjoining Maj. Higgins place on the map is spelled P-a-r-n-e-l-l.

A. It should be P-u-r-n-e-l-l.

Q. Your father's name was not spelled P-a-r but P-u-r?

A. Yes, sir; Purnell.

Q. Purnell and not Parnell?

A. That is right, Purnell.

Q. Where did that place lie with reference to Island 98?

A. Directly east of it.

Q. The W. Purnell place was in the State of Mississippi was it?

A. Yes, sir.

Q. What water was immediately west?

A. A chute between Island 98.

Q. Where was the main channel of the river?

A. West of 98.

Q. How long did you live at the place marked "W. Pur-
[fol. 421] nell" on the map?

A. I was there from 1880 to 1897, in January.

Q. Continuously?

A. Well, a few months may have intervened.

Q. Well, I mean you lived there?

A. Yes, sir; that was my home.

Q. Now, what familiarity had you with Island 98, if any?

A. Well, I have been on it hundreds of times—hunted on it.

Q. Tell everything you can think of in connection with Island 98 that would show your peculiar familiarity with it?

A. Well, I know for one thing, it had very heavy timber on it. You could not see anything through there, and I have swam across from the Mississippi side, from the land over to the island. In fact, at one time I came mighty near getting punished for it. Father sat on the bank and waited until I came back and told me that if he caught me at it again he would do something about it.

Q. You say you have been on the island hundreds of times, Mr. Purnell?

A. I would say that I have. In my boyhood days I used to hunt across there. I used to hunt across there a good deal.

[fol. 422] Q. What was the size of the timber on the island?

A. Well, it was all virgin growth. Now, there was oak and gum, and I would judge that it was four feet—some as much as four feet through. And there was several of the very large size of cottonwood, and one especially, we knew it as the "Big Tree" on the island, and I judge it to be seven or eight foot through. That was the western part, and while I use that statement west, on the east of us in the swamp there was a big cottonwood tree that we measured, four feet from the ground, that run, I think, thirty-seven feet.

Q. Around?

A. Yes, sir.

Q. You mean by that in circumference?

A. Yes, sir; and over on the island were some big trees somewhat smaller than that, but not quite as large.

Q. Nearly as large?

A. Pretty near; yes, sir.

Q. There is no question about it being virgin timber on the island when you first knew it?

A. None whatever.

Q. Where was the main channel of the river? Between the island and the State of Mississippi, or between the Island and the Louisiana shore?

[fol. 423] A. On the west side of the Island—heaviest against the island.

Q. You mean the deepest part of the channel was over next to the Island?

A. Yes, sir.

Q. Was the channel, at any time, between your farthest recollection of that place in 1867 and in 1897 between the Island and the Mississippi river?

A. No, sir.

Q. The channel never was between the island and the Mississippi river?

A. No, sir.

Q. Did the boats ever run between the island and the Mississippi shore? Where was the main channel of the river with reference to Island 98 during all that time?

A. Directly west of it and on the edge of it.

Q. Did any boats ever run between Island 98 and the Mississippi main shore?

A. We used to have a Bend Boat, a Vicksburg and Greenville packet. If they had a load of freight for our place we got the Captain to run up the chute and come to our landing. But as a regular thing the boats did not run through there.

Q. When could they run up the chute and come to your [fol. 424] landing, would that be during high water or low water?

A. High water.

Q. Could they do that in low water?

A. No, sir.

Q. When you first knew Island 98 you say the deep part of the channel of the river was on the west side of the Island?

A. Yes, sir.

Q. Next to the Island or next to the Louisiana shore, Mr. Purnell?

A. Next to the Island.

Q. When did you first observe the island on the western side caving, if it ever caved?

A. The first time that I ever crossed the island to the other bank. I don't know the exact year, but it was in my younger days.

Q. Before you were grown?

A. A long time before I was grown. Probably it was when I was ten years old.

Q. It was caving then?

A. Yes, sir.

Q. Do you know whether or not that caving continued?

A. To the best of my knowledge it did.

Q. You lived opposite the island, I believe you said, Mr. Purnell?

[fol. 425] A. Yes, sir.

Q. Do you know whether it did or not?

A. I am confident it did. Yes, sir; it did.

Q. It did?

A. Yes, sir; I can give you my reasons for it if you want me to.

Q. All right?

A. When we moved up there in '67 the island, at its widest part, was about a mile and a half wide, and from five to seven miles long, and it caved continually, shorter and narrower from that time on.

Q. Do you know whether or not the island ever entirely disappeared, Mr. Purnell?

A. Yes, sir.

Q. Do you know about when it disappeared?

A. Either in 1894 or 1895, during the high water of either one of those two years, but I am not positive. It was during one of those two years, during the high water. But, as I say, I am not positive which.

Q. Did you say that it disappeared or not?

A. It did.

Q. Then, how did it disappear?

A. It washed out entirely.

Q. There was not a vestage of it left, of any sort?

[fol. 426] A. No, sir.

Q. Up to the time of the disappearance of that island,—of the complete disappearance of that island, where was the main channel of the river?

A. It was to the west of the island.

Q. Do you know whether or not there was any tow head over on the Louisiana side opposite the island?

A. It was then building up a tow head, and as the years went on it grew larger and larger. The tow head was on the Louisiana side, and in high water boats could go between it and the Louisiana shore,—make the cut off. They would do that to keep from going all the way around the bend of the channel.

Q. At all times where was the channel of the river with reference to that tow head up till 1897,—up until the time you left there?

A. East of it.

Q. Towards the Mississippi side?

A. Yes, sir.

Q. Now, do you know Mr. R. E. Foster?

A. Yes, sir.

Q. Do you know where his Magna Vista plantation was?

[fol. 427] A. Magna Vista?

Q. Yes, sir. Did you know where he lived, Mr. R. E. Foster? Did you know where he lived?

A. Yes, sir; he lived on Cottonwood Plantation at Shilo Landing.

Q. Is that on the Mississippi river?

A. Yes, sir.

Q. How far above where you lived, Mr. Purnell?

A. It is ten or twelve miles.

Q. Do you know whether he moved from there to any other place?

A. He did not.

Q. He lived there all the time?

A. All the time. He has been living there continuously.

Q. Do you know whether or not he owned other property?

A. No, sir; I do not.

Q. He must have owned other property?

A. Possibly so.

Q. You don't know whether he visited the Magna Vista plantation often or not, do you?

A. No, sir; I do not.

Q. Did you see Mr. Foster very often?

A. Very seldom.

Q. He did not visit your section very often?

[fol. 428] A. No, sir.

Q. Do you know who owned the place just north of Maj. Higgins during the time you lived there in that section?

A. There were several people on it at different times while I knew it, but I don't know that I ever knew who owned it, Judge. I know of several different people being on it, but I can't say that I know who owned it.

Q. What was that place called, Mr. Purnell?

A. It was called Albemarle.

Q. Albemarle is marked on the map just above Maj. Higgins, as you state. Was there anybody ever on there by the name of Chilton?

A. John M. Chilton; yes, sir. He had it leased. He did not own it, but he had it leased for a term of years.

Q. Did Mr. Foster ever own that place?

A. Not to my knowledge.

Q. Did he ever have it leased or have charge of it that you know of?

A. I have never known of such a thing. I never knew it if he did.

Q. If he did you say that you never knew it, Mr. Punrell?

A. It he did I never knew it; no, sir.

[fol. 429] By Mr. Henry: The witness says that he don't know who owned it.

By Mr. Dale: I know he said that, and I want it in the record just like he stated it, and I am sure it is in there.

Q. Now, do you know the place that is now Albemarle?

A. Ingomar.

Q. Do you know who owned that?

A. No, sir; I do not. I know who lived on it for a long time.

Q. Who?

A. A. D. Hughes.

Q. Do you know whether or not a C. Smith——

A. (Interposing.) C. Smith was his brother-in-law.

Q. C. Smith was a brother-in-law of Hughes?

A. Yes, sir.

Q. Do you know whether or not Mr. Foster owned or controlled that property?

A. I do not.

Q. Did you ever see him on it or about it?

A. No, sir.

Q. Do you know the Burleigh plantation?

[fol. 430] A. Yes, sir.

Q. Do you know where that place was with reference to Ingomar?

A. North of it.

Q. Do you know who owned that?

A. In my younger days it belonged to a man we called Dr. Dunn, but I don't know his initials, and I don't know who acquired it since.

Q. Did you ever know of Mr. Foster being in charge of that property?

A. No, sir.

Q. I will ask you now whether or not you ever knew Cottonwood plantation? Cottonwood Landing, I mean?

A. I have never seen a boat at it. I have heard of it, Judge. I have heard of it, but never saw a boat at it; no, sir.

Q. There is a landing called Cottonwood Landing?

A. I have heard of Cottonwood Landing.

Q. Do you know whose place Cottonwood Landing was on?

A. I never saw a landing, but it was known as Mr. Foster's landing.

Q. Cottonwood Landing was known as Foster Landing?

[fol. 431] A. Mr. Foster's landing; yes, sir.

Q. Do you know whether or not Mr. Foster lived there, Mr. Purnell?

A. He lived on the Cottonwood place; yes, sir.

Q. Was that near the landing?

A. The landing was supposed to be in front of it.

By Mr. Henry: Just wait. We object to what he supposes. Let him state what he knows.

By Mr. Dale:

Q. State whether——

A. (Interposing.) Just put me down as saying that I was never at the landing.

Q. I will ask you whether or not at the time you say Island 98 was caving away, whether or not land was being made on the Louisiana shore opposite?

A. We could see that it extended out there each year after every freshet of water; yes, sir.

Q. It extended further and further?

A. Further towards the east, towards the Mississippi shore.

Q. Have you ever been on Willow Point? That is the Newman property?

[fol. 432] A. Yes, sir; I have been there. Been on the main land.

Q. You said there was a tow head near that. Have you ever been over on the tow head?

A. I was on the bar after the water was down—leave the tow head off—I was on the bar when I was a boy; yes, sir.

Q. When the water was low was there dry land or not from the tow head to Willow Point?

A. Yes, sir. I can give you my reason.

Q. All right?

A. I went across in a skiff from our old cabin home. That was when we lived down at Belleview, and got my brother.

Q. Went across there? Where?

A. Yes, sir; to the bar on the Louisiana side.

Q. When you say the bar do you mean Newman's tow head, or the other part of the bar beyond it?

A. The bar, extending towards Mississippi from the main land.

Q. That was higher further inside, or do you know about that, Mr. Purnell?

A. I don't know.

Q. You don't recollect?

[fol. 433] A. No, sir.

Q. Well, do you know whether beyond what you spoke of as the tow head there was any depression, or where the water was, whether it was lower in between there and the main bank or not?

A. In high water; yes, sir. In high water the boats used to make a cut off through there.

Q. And go through between the tow head and the main land?

A. Yes, sir.

Q. Now, in low water, the place where boats went through in high water, was connected with the main land, was it?

A. Yes, sir.

Q. Do you know whether one could walk from the main land to the tow head?

A. Yes, sir; I went over there in a skiff after my brother, who had gone to visit Walter Newman, and he came across the bar to me, on foot.

Q. On foot?

A. Yes, sir.

Q. And walked over to the tow head?

A. Walked over past the tow head to my skiff at the edge of the bar.

Q. And you took him across the Mississippi river back [fol. 434] to your home?

A. Yes, sir; back to our home.

Q. Where was the channel of the river with reference to that tow head and Island 98 during all of your recollection, Mr. Purnell?

A. It was on the Mississippi side, on the west of the island, is all that I know.

Q. And on which side of the tow head?

A. East of the tow head.

Q. And west of the Island?

A. Yes, sir; and closer to the island.

Q. That is all.

Cross-examination.

By Mr. Creekmore:

Q. When did you say you moved to Belleview?

A. Moved to Belleview plantation?

Q. Yes, sir?

Q. In 1867.

Q. How long did you remain there?

A. Until 1880.

Q. Now then, Belleview is how far south of the south point of Island 98, as you knew it?

A. When we went there Belleview was facing the Island.

Q. Belleview was facing the island?

[fol. 435] A. Yes, sir.

Q. Facing the Island?

A. Yes, sir; and the island extended down, all down on the front.

Q. Did you go farther south than Belleview?

A. I can't say.

Q. But you do know that it came as far down?

A. Yes, sir.

Q. Now, Belleview is what is shown on the map that Judge Dale has here as the Dr. W. Kiger plantation? This map here is the one I am talking about. It was known as the Dr. W. Kiger plantation?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And that is south of Ingomar Post Office?

A. Way south of it; yes, sir.

Q. Way south of it?

A. Yes, sir.

Q. The island you are talking about extended as far down as Belleview plantation?

A. Yes, sir.

Q. I am not talking about the island that only came as far down as the Brown place as shown on the map?

[fol. 436] A. That is the same island.

Q. That is the same island?

A. Yes, sir.

Q. Do I understand you to say that the map incorrectly shows the island as you recollect it?

A. No, sir; outside of my testimony let me explain something to you.

Q. You can give it in as testimony and then explain it. Whatever explanation you care to make can go in the record, Mr. Purnell?

A. All right. Down Chotard, around on the Belleview front, there was a piece of land that lay between the Belleview plantation, or a part of it, and the Mississippi river. We called it Lower Chotard, and Gabe Brown had a store down there, and the old Chotard landing was on this piece of land, out in front of Belleview, and the island extended down to that.

Q. Down to Old Chotard Landing?

A. Yes, sir.

Q. Now, come here, and let us look at the map, please Mr. Purnell. Do you see the marks on the map, "Chotard Landing" right where my finger is?

A. This place here?

A. Yes, sir; right there on the map where my finger is pointing, Mr. Purnell?

A. Yes, sir.

[fol. 437] You see the island, the point of the island, is some distance north of that point, do you?

A. Yes, sir.

Q. Now, as I understand you, you say the point of the island was away down here by the Kiger plantation, Belleview? The Kiger Plantation or Belleview plantation?

A. When we moved up there it did.

Q. It did?

A. Yes, sir.

Q. Now, you say the island was washing?

A. Yes, sir.

Q. Where did it wash from? The south, north, or the middle portion of the island?

A. It washed all the way down it. It washed all the way down it. It cut from the upper part of it, the width of it to a point, and it washed this side the point, and gradually worked up—worked up—all the way up until about 1894 or '5, one of the two years, when a freshet took it all out.

Q. What part of the island was the last to wash away?

A. The part in front of Eustatia and Auraton plantation.

Q. You testified, I believe, as to the size of the Island in 1867?

A. Yes, sir.

[fol. 438] Q. What was the size of the island at that time?

A. We claim it—in talking, I get it from the testimony of the family—of course, I was too young then—I was about most a year old—that it was about a mile and a half wide at its thickest part towards the north, and from five to seven miles long.

Q. You were a year old at that time?

A. Yes, sir.

Q. In '67?

A. Yes, sir.

Q. You know absolutely nothing about the size of or the shape of the island at that time, do you?

A. Nothing at all; no, sir.

Q. And so when you told counsel that you knew about that fact you were simply stating something that you had heard from someboly else?

A. I was told that I was born by my family, and that is the only way that I know that I was born, and that is the only way I know the time. That is the way.

Q. That is the way you know this?

A. Yes, sir.

Q. And you are stating something about which you have been told?

A. Yes, sir; up to the time that I was eight or ten years [fol. 439] old. From then on of course I knew.

Q. So you do not claim to have had personal knowledge of this island in 1867?

A. No, sir.

Q. Now, when do you, or when did you first have any distinct personal recollection of the island?

A. It was in about '77 or '78. At that time I was old enough to know and did know.

Q. At that time in '77 or '78, did the island extend as far south as Belleview or Kiger plantation?

A. Yes, sir.

Q. It did?

A. Yes, sir.

Q. I hand you now a map of the Mississippi River Commission, Chart 46, which has already been introduced in evidence, being Exhibit Number,—I can't find the marking on it, and we will leave it blank for the present and supply it afterwards when we find out what exhibit this is. This map purports to have been made in 1879?

A. Yes, sir.

Q. The point of the island—that shows the point of the island as it originally was. It shows the point of the island as of the date of the map about midway of Section 28, from near the south or slightly south of the mid-way point, while [fol. 440] the Kiger plantation is shown to be a half a mile or such a matter south of that point?

A. Of this point?

Q. Yes, sir; of the lower point of the island.

A. When was that date?

Q. In 1879?

A. In '79 we lived on a part of Belleview here. Here is the island. Chotard was, as I told you, in front of Belleview. You see this was Gabe Brown in here. We lived here, up on the upper end of Belleview. That was in '79.

Q. Northwest of 33 that is?

A. We lived right in here, and in that year, '78, I went around the point of this island which extended below our home. I went around behind this island and went over here to the Louisiana side.

Q. So you had to go south around the point of the island?

A. Yes, sir.

Q. And this map showing the point of the island up in Section 28 is incorrect?

A. For what year?

Q. In '79?

By Mr. Dale:

That is objected to for the reason that there is no evi- [fol. 441] dence that in 1879 Island 98 extended only to the middle of or a little south of the middle of Section 28. Therefore, it is not fair to ask the question of the witness whether or not the map is correct?

By Mr. Creekmore: Of course, the question is asked on the theory that the evidence does show the point of the island was as shown on the map. The map shows it.

By Mr. Dale: But the map does not show the date this survey was made.

By Mr. Creekmore: Yes, it does show here that it was made in 1879-80.

By Mr. Dale: It says "projected."

By Mr. Creekmore: That is the only way that you can make a map. You project it from your survey.

By Mr. Dale: Let our objection be noted in the record.

By the Commissioner: Note his objection, and proceed, Mr. Creekmore.

By Mr. Creekmore:

Q. So this map is wrong, according to your recollection? [fol. 442] A. Yes, sir.

Q. And if the map is right your recollection is wrong, Mr. Purnell?

A. My recollection is not wrong.

Q. Your recollection is not wrong?

A. No, sir; I went from our old cabin home over there in '78 and got my brother when I had to go below it and know that it was up in front of Belleview.

Q. That trip was made when you went there to get your brother when he went over to make a visit to Walter Newman, was it?

A. Yes, sir.

Q. He had walked across, you say, from the towhead—from the Louisiana shore?

A. Yes, sir.

Q. How did you know that he was over there at that point?

A. We had had some two or three days before that a country dance on our side of the river, and Walter Newman came down to Henderson and came to the dance. My brother, being a friend of his, went over with him, went back down and crossed over and went up to his house. He stated that is where he went. They said they were going [fol. 443] there. He said to me, "Now, Ed, Thursday—I'm going to be over there a couple of days,—come across and get me." And I went.

Q. You went pursuant to that agreement?

A. Yes, sir.

Q. Was there anybody with him when he was coming over there?

A. No, sir.

Q. All you know except from the statement that he made to you there as to how he reached that point, is what he told you?

A. Of course I will not swear to that.

Q. That's another hearsay statement, is it not?

A. I don't think that you could hardly call it that. I don't think you could call it that.

Q. Do you know anything about how he got there other than what he told you?

A. Only that he came to me on foot across the bar.

Q. That, you say, was in the year '78?

A. In 1878 or '79, I forget which.

Q. In '78 or '79?

A. Yes, sir; it was '78 I think.

Q. When you went over there did you go to this towhead or sand bar, or Hopkins' Island?

A. I went on a sand bar on the west side from Hopkins [fol. 444] Island.

Q. Would it still be Hopkins Island?

A. Yes, sir; I have seen it.

Q. Where was Hopkins Island?

A. Northwest of 98 Island.

Q. Northwest of 98 Island?

A. Yes, sir.

Q. When was the first you knew of Hopkins Island?

A. Personally, I knew of it before we went up on our new place, because I pulled around the island and went up on it and hunted.

Q. That was before 1880?

A. Yes, sir.

Q. You left Belleview in 1880?

A. Yes, sir.

Q. What direction was Hopkins Island from this towhead or sand bar you landed on when you got your brother?

A. You might say in a northerly direction.

Q. Up the river, in other words?

A. Yes, sir.

Q. Up the river?

A. Yes, sir.

Q. Is Hopkins Island still over there?

A. I don't know. I have been away from there so long [fol. 445] I don't know whether any is left there or not.

Q. When you left over there in 1897 was Hopkins Island still there?

A. There may possibly have been a little of it, but the main portion had caved off of it. I don't know whether there was any left on the upper end or not.

Q. When was the last time you saw the Hopkins Island, Mr. Purnell?

A. I don't know. I don't know when I did see it last. I don't know—don't remember.

Q. You don't know?

A. No, sir; don't remember.

Q. What water formed Hopkins' Island?

A. Do you mean what year? What high water?

Q. No; what was on—What water was on the east of Hopkins' Island?

A. Part of the Mississippi river.

Q. On which side of the main channel was Hopkins Island?

A. A greater portion of Hopkins Island was on the west, and I am not positive whether it stayed that way all of the time or not.

Q. You mean it may have gotten over on the east side?

[fol. 446] A. The river changed in there—the current changed at one time. It is possible that it could be one way and possibly it was another. I could not keep up with it, you know.

Q. Let us take the first time that you knew Hopkins Island?

A. Yes, sir.

Q. About when was that?

A. Probably in '78.

Q. In '78?

A. Yes, sir.

Q. The river then was on what side of it?

A. On the main side then—on the Mississippi side.

Q. On the Mississippi side of the island?

A. Along the east side.

Q. The Mississippi shore?

A. Yes, sir.

Q. The river was between the main shore and Hopkins Island?

A. Yes, sir.

Q. What was there between Hopkins Island and the main Louisiana shore?

A. A stream of water through there.

Q. Stream of water through there?

[fol. 447] A. Yes, sir.

Q. What was it called?

A. I don't know that it was called anything except the river.

Q. Was it one prong or branch of the river?

A. I judge it was judging the way that it went around and then there was another one that went through so as to make an island out of Hopkins Island.

Q. What was the character of that water between Hopkins Island and the main shore of Louisiana, the width and depth?

A. A good width of it, and deep.

Q. A steamboat channel, was it?

A. Yes, sir.

Q. Now, I hand you a map marked Exhibit H. to the bill of complaint in this case which shows Hopkins Island by dotted lines here in 1870, and shows——

A. (Interposing.) Is this Hopkins Island?

Q. Well, I don't know which is. I am just telling what the map shows. The map shows that this is Hopkins Island here, you see,—along here.

A. What's this here?

Q. That's a sand bar.

A. This is what I have always known as Hopkins Island.

[fol. 448] Q. That bar there?

A. Yes, sir; to the northwest of the top end of Island 98.

Q. Shown on the map you are looking at as "High Bar?"

A. Yes, sir.

Q. And having on the lower left hand corner of it the words, "1882 Bar Line."

A. Yes, sir.

Q. That is what you understood as Hopkins Island?

A. Yes, sir; that is what I have always known as Hopkins Island.

Q. This map shows what you say was what you thought was Hopkins Island, on the east side of the mid-river channel, does it, as shown by this map?

A. Yes, sir; it looks that way to me.

Q. And where the chute goes between it and Island 98?

A. Yes, sir.

Q. So Hopkins Island, as shown on the map, Exhibit H, was in 1882, occupied by the bed of the river, was it?

A. I can't tell you that.

[fol. 449] Q. You don't know about that?

A. No.

Q. Now, you see on the map which the complainant introduced, the south end of Island 98 in 1882 comes just below the center of Section 28?

A. Yes, sir.

Q. Does it?

A. Yes, sir.

Q. While the Belleview plan-tion is down here in the northeast corner of Section 33. This map that the complainant introduces in evidence is wrong, according to your recollection, of the lower part of the island?

A. Yes, sir.

Q. When was it that you first went over on the west side of Island 98 and saw that it was caving?

A. Ever since I was able to pull a skiff—when I was seven or eight years old.

Q. That would make it about 1873 or 1874?

A. Somewhere along there.

Q. It was then caving?

A. Yes, sir.

Q. At what end?

A. All down the west side.

Q. All the way down—where was the greatest caving [fol. 450] going on?

A. I can't tell you.

Q. You don't know?

A. No, sir. It was continually washing away at the western side.

Q. While that was going on Hopkins Island was washing away?

A. Hopkins Island was not washing away as fast as 98 was.

Q. But it was washing?

A. Yes, sir; it had a steep bank there.

Q. Which side of Hopkins did it wash from?

A. The southwest.

Q. On the southwest side?

A. Yes, sir.

Q. And there was enough of the current coming over on the west side of Hopkins to wash it?

A. On the west side; yes, sir. There was enough current in there to wash it on that side.

Q. Did steamboats travel that channel in times of ordinary high water?

A. They traveled both of them in ordinary water; yes, sir.

Q. In low water did they travel it?

A. Now, I don't know, in extremely low water, I don't [fol. 451] know whether they could get through or not.

Q. But in ordinary stage they could?

A. Yes, sir.

Q. You say you have been on that Island 98 hundreds of times?

A. Yes, sir; over a hundred times.

Q. When did you see that territory last?

A. I saw it in the early nineties.

Q. You have not seen it since early in '90?

A. Do you mean the main bank?

Q. I am not talking about the island. I am talking about the territory in there.

A. Oh yes; I took charge of my brother's store and a small plantation in 1907 and stayed there until 1910.

Q. Where?

A. On the upper portion of Belleview.

Q. Since that time have you see- this territory?

A. I have seen it but not lived there.

Q. Well, have you been out on the island or tow head or whatever you are a mind to call it?

A. No, sir; no, sir.

Q. Since then?

A. No, sir.

Q. Do you know that there is land there now there about [fol. 452] where Island 98 was when you first knew it?

A. No, sir.

Q. You have not seen that land?

A. No, sir; I have not been there since 1903.

Q. You don't know where the river runs now?

A. I was there—I took charge of my brother's store in 1907. I went to Florida in 1903, and came back in 1907 and took charge of my brother's store and run it for four years, and managed his little plantation. That would leave me there until 1910. From 1910 on I have not been in that country at all.

Q. Let me travel back and ask you a question that escaped me. At the point on the sand bar or tow head where you picked your brother up, where you landed and picked your brother up, what distance and in what direction was that sand bar from Hopkins Island?

A. Well, now, I can't give you the exact distance. But to strike the Louisiana it was to the north of me, but I don't know the distance.

Q. What was north of you?

A. Hopkins Island.

Q. Hopkins Island was north?

A. Yes, sir; of where I struck the sand bar.

Q. Can you estimate the distance?

[fol. 453] A. No, sir; I can not.

Q. You don't know whether it is a quarter of a mile or a mile?

A. No, sir; I can't give you any idea. I don't know. I just don't know.

Q. But the sand bar was about opposite, as I understand you, from Belleview Plantation?

A. Yes, sir; yes, sir.

Q. And that was in the northeast corner of Section 33?

A. I don't know the section.

Q. The section that I pointed out to you on the map?

A. Yes, sir; the one you pointed out to me.

Q. And that sand bar that you have been talking about is the one that you say grew from year to year?

A. Yes, sir.

Q. As the island washed away?

A. Yes, sir.

Q. And it grew from that point down to opposite Belleview?

A. No, sir. I will not say from that point. I would say that it grew, as it turned out, from Willow Point or the Newman's Point, it made out in a great wide sweep, all the way. Now, in down from Henderson, on the Louisiana side, [fol. 454] it made a sweep around this way. It did not come out from the point at all.

Q. Did it go north and east from under the end of Willow Point?

A. You might say northeast.

Q. Northeast and east?

A. Yes, sir.

Q. Did you ever see Montgomery's map of East Carroll Parish, Louisiana?

A. No, sir.

Q. You don't know anything about that map?

A. No, sir.

Q. In 1903 and 1904, was this sand bar that you have been talking about, or tow head, whatever you want to call it, connected with the Louisiana side?

A. I was at Meyersville, Mississippi. I don't know. I left our home in 1897, and was at Meyersville, Mississippi, until 1903, and then I went to Florida. Those years I don't know anything about it at all, and did not know anything about it from 1910 on.

Q. Now, you say that you knew nothing about Magna Vista plantation?

A. No, sir; I did not say that.

Q. Do you know where it is?

[fol. 455] A. Yes, sir.

Q. Where it is?

A. On the road. We used to go up the river bank up there, up to Meyersville, up in the county, facing the river.

Q. Well, where is it with reference to Albemarle?

A. North of it.

Q. How far?

A. Several miles, but I don't know how many.

Q. You don't know how many?

A. No, sir.

Q. And you say you never knew of Mr. Foster owning that place?

A. Not Mr. R. E. Foster; no, sir. Not Mr. R. E. Foster.

Q. Did you ever know of any Foster?

A. Yes, sir.

Q. What Foster?

A. I don't know his name.

Q. Was he any relation to R. E. Foster?

A. I think not. I can't say.

Q. When was it that Mr. Foster owned it?

A. Before I moved up on Auraton plantation prior to 1880.

Q. Do you know whether Mr. R. E. Foster ever owned it?

A. I don't know.

[fol. 456] Q. You know Mr. R. E. Foster, do you?

A. Slightly; yes, sir.

Q. You have known him for a good many years?

A. Yes, sir.

Q. He is a member of the legislature from that county, is he not?

A. Yes, sir.

Objected to.

Q. He is regarded as an honorable gentleman, is he not, Mr. Purnell?

A. One of the finest men that I ever knew in my life.

Q. *Id* he said that he owned a plantation you would not doubt it, would you?

A. I would take Mr. Foster's word for it.

Q. I see. So then, as I understand you, you are without knowledge about the ownership of it?

A. Yes, sir; in regard to Mr. Foster. I don't know whether he ever owned it or not.

Q. I see, and you don't know either, of course, anything about how often he may have been on Magna Vista plantation, do you?

A. No, sir; not myself.

Q. Not the slightest?

A. [illegible] sir; not the slightest.

[fol. 457] Q. You were down, until 1880, below Chotard?

A. Right adjoining the Chotard plantation.—the upper part. There were two pieces of it, as I told you. The upper and the lower one, and I was right adjoining the upper.

Q. I see.

A. Yes, sir; I was right adjoining the upper.

Q. Do you know where the line between Issaquena and Warren counties is?

A. About.

Q. It is right there at Belleview, is it not?

A. Yes, sir.

Q. Which county is Belleview in?

A. Issaquena.

Q. And just south of it is the Warren county line?

A. Yes, sir.

Q. Now, you say that you saw the last of Island 98 either in '93 or '94, or '5?

A. Yes, sir.

Q. What was the size of that island before that overflow?

A. I don't know.

Q. Can you give us some idea?

A. No; I can't. It was probably a half a mile long and a hundred or 200 yards wide.

[fol. 458] Q. Is that the best estimate you can make?

A. Yes, sir.

Q. Did it disappear suddenly?

A. During the high water; yes, sir. It covered it over, the high water did, and I saw the trees fall, and the last trees on there fell while the water had the land covered. I saw them fall.

Q. Well, were you there the next year?

A. Yes, sir.

Q. Was the river flowing over the place where the island had been?

A. Yes, sir.

Q. Up to the time that you left there had there been any sort of land reappeared where you saw the Island 98 disappear?

A. None whatever.

Q. None whatever?

A. No; none whatever.

Q. Now, about this chute you saw you swam as a boy between Island 98 and the shore?

A. Yes, sir.

Q. Did the boats go up that chute?

A. If they had freight. They did not go up regularly, as a regular thing. But if they had freight enough, and to [fol. 459] keep from hauling a heavy load from Chotard Landing, we got the captain to come up as far as our front and put it off there.

Q. That was at the Purnell plantation?

A. Yes, sir.

Q. All right. After the boat would come up there to your place would it go on through?

A. Sometimes it did.

Q. On north around the island?

A. Yes, sir.

Q. And back into the main channel?

A. Yes, sir.

Q. Now, that was done by the packet boats?

A. That was done by the Vicksburg and Greenville packet. The large boats would not come in there at all.

Q. The big boats never did run through the chute?

A. No, sir; they never did.

Q. Not in the highest water?

A. No, sir.

Q. What boats do you remember going through there?

A. We had the Belle of the Bend and the Issaquena going through there.

Q. They were both side-wheelers, were they?

A. Yes, sir.

[fol. 460] Q. They were both big boats?

A. No, sir.

Q. You don't call them big boats?

A. No, sir.

Q. What would constitute a big boat, in your estimation, Mr. Purnell?

Q. We generally called the Anchor Line steamboats our big boats. I regard them as big boats.

Q. The others are smaller boats?

A. Yes, sir.

Q. Do you know about the mail boats going through there?

A. They were the mail boats.

Q. What, the Anchor Line?

Q. No, sir; the Issaquena.

Q. The mail boat did go through there?

A. Yes, sir; at times.

Q. At times?

A. Yes, sir; at times they would go through there, but they did not make a regular thing of it.

Q. Do you know anything about them going through there in '92?

A. Well, I don't know. I don't know that they went through there in '92.

[fol. 461] Q. Do you know that they did not go through there in '92?

A. No; I don't know it.

Q. You don't know about that?

A. No.

Q. How long did they continue to go through there, Mr. Purnell?

A. They would only come as we requested them, and they came in from then until the island was swept away. If I had freight for them to come up there they would come, and if they did not have any they would not come, but would go on the outside of the island then.

Q. So far as you know, as long as the island was there, when requested, they would come through the chute?

A. Yes, sir; they would come up there then for me.

Q. Suppose that they had freight for Higgins, or somebody above you, would they come in for them just the same as if for you?

A. I don't know about that. The Higgins place had a landing on Albemarl front, right out in front of them, and they received their freight there.

Q. You mean that nobody had a landing on the chute except you?

A. Nobody that run back that I know anything about.

[fol. 462] Q. You knew Maj. Higgins, did you?

A. Yes, sir; very well.

Q. Do you remember the day that he killed himself?

A. Yes, sir.

Q. When was that?

A. I don't remember the date.

Q. Well, approximate it if you can. You need not confine yourself to the exact day?

A. I would not try to approximate it, for I don't remember. I know that he did it, though.

Q. Well, was it after you were a grown man, or while you were yet in your teens? Yet a boy?

A. It was while I was a boy in my teens.

Q. Then, it was prior to 1886?

A. No—'86,—yes, sir. It was prior—it was in the eighties, but I can't tell what year.

Q. "In the eighties," is as close as you can get to it?

A. Yes, sir.

Q. Now, when he killed himself his place, or large part of it, had caved into the river?

A. No, sir.

Q. Hadn't it?

A. No, sir; his house, the home place, was setting in that [fol. 463] same place for the last 75 years. It had not been moved a particle.

Q. Let me see if I understand you. Had any of his plantation caved in the river at the time that he killed himself?

A. I don't think that it had gotten to his place at all.

Q. The Island 98 was still in existence when he killed himself?

A. Yes, sir.

Q. Was Hopkins' Island in existence then?
A. Yes, sir.
Q. That is all.

Redirect examination.

By Mr. Dale:

Q. Do you know—are you familiar with maps and surveys?
A. No, sir.
Q. Do you know anything about the sections, townships and ranges of those places that you have been testifying about?
A. No, sir.
Q. You were asked about 1882. You were shown a map [fol. 464] of Island 98 in 1882 and asked in regard to the map. Do you recollect whether or not prior to 1882 the island, when you first knew it, had begun caving?
A. Yes, sir.
Q. Well, do you know whether a considerable part of it had caved away up to that time?
A. It sure had.
Q. It had?
A. Yes, sir; both on the sides and on the length of it, too.
Q. Did the island, in 1882, extend down as far as when you first knew it?
A. No, sir.
Q. The lower end was cut off considerable?
A. Yes; indeed. Way up.
Q. Do you know whether the island extended down as far as Belleview?
A. Yes, sir; way down in front of Belleview.
Q. It did at first, but in '82 do you recollect whether or not it had caved off in front of Belleview?
A. Not in 1882. I will not say that it was or was not—that it was or was not.
Q. You don't recollect whether or not?
[fol. 465] A. No, sir.

By Mr. Brandon:

Q. On cross-examination, Mr. Purnell, you mentioned a place called "Oraton." What was Oraton place?

A. That was my father's plantation.

Q. How did it get its name?

A. That was the name of my step-mother. When my father married her her name was Ora, and he put the "ton" to it and called it Oraton.

Q. Now, referring to the map, Sheet 17, Exhibit C to the bill of complaint, on your direct examination, you pointed out the words, W. Parnell, and which you say should be spelled Purnell. State whether or not that is the location of Oraton place?

A. Yes, sir.

Q. It is?

A. Yes, sir.

Q. Just north of Ingomar or Gabe Brown's place?

A. Ingomar was not Gabe Brown's place,—Chotard and Gabe Brown's place were there just adjoining. The line divides the two, the Oraton place and the Chotard place.

Q. You stated on cross-examination that you lived on the Kiger or Belleview place from your infancy in 1867 until 1880?

[fol. 466] A. Yes, sir.

Q. Where did you go in 1880?

A. We moved to an old plantation that was deeded to us by the Peeples Estate,—by the Peeples to my father.

Q. And what was the location of Island 98 with reference to the Oraton plantation where your father moved to?

A. Directly in front, on the west.

Q. Now, from 1880, state whether or not you have personal knowledge and recollection of the changes that took place in Island 98?

A. Yes, sir; from then on.

Q. You have been asked on cross-examination by counsel about an island called Hopkins' Island. Did you have occasion to visit that island as frequent as you did Island 98?

A. No, sir; I was only on it a few times.

Q. That is all.

(Witness excused.)

[fol. 467] JOSEPH V. DE LAHUNT, called as a witness on behalf of the complainant, was sworn and testified as follows:

Direct examination.

By Mr. Brandon:

Q. State your name to the stenographer?
A. Joseph V. De Lahunt.
Q. What is your age?
A. Seventy.
Q. Where are you now living?
A. Memphis.
Q. What is your profession or occupation?
A. Pilot and captain.
Q. Pilot and captain on what waters?
A. From Cairo to New Orleans.
Q. On what river?
A. The Mississippi river.
Q. How long have you been living in Memphis?
A. I have been in Memphis now about fifteen or sixteen years—something like that.
Q. In what service are you?
A. Working for the Government in the Second District, pilot and captain of a boat.
Q. Headquarters United States Engineer's office there?
[fol. 468] A. Yes, sir.
Q. Prior to moving to Memphis where did you live, Captain?
A. Vicksburg. That is where I lived before I moved to Memphis.
Q. What age were you when you went to Vicksburg to live?
A. Well, I was just fifteen years younger than I am now.
Q. When you went to Vicksburg to live, not when you left. Did you go to Vicksburg as a child, or after you were grown?
A. I came to Vicksburg when I was about twelve years old.
Q. And did you live there in Vicksburg until you moved to Memphis?
A. Yes, sir.

Q. About what age were you when you became a licensed master and pilot on a boat on the Mississippi river?

A. I got a license in '8—I think it was either '79 or '80.

Q. Either 1879 or 1880?

A. Yes, sir.

Q. What boat were you first employed upon?

[fol. 469] A. The first boat that I was ever on as a pilot was the Josephine Spengler.

Q. In what capacity was the Spengler?

A. She towed rafts for the Spengler mill.

Q. Between what points?

A. She went up to Miller's Bend above Greenville.

Q. Between Vicksburg and Miller's Bend above Greenville?

A. Yes, sir.

Q. In what capacity were you on the Spengler?

A. Pilot.

Q. As pilot?

A. Yes, sir.

Q. And how long were you a pilot on the Spengler?

A. I was on her one season—just about one season.

Q. What year was that?

A. It was about '79— 1879 or 1880—near '79. Just after the yellow fever.

Q. Just after the yellow fever in 1878?

A. Yes, sir.

Q. All right, then after the Spengler, what boat were you on?

A. I was on the Kate Dixon from Vicksburg to Green-

[fol. 470] ville, the Vicksburg and Greenville Packet Company.

Q. For what length of time were you pilot on the Dixon, Captain?

A. I was on her about two years, I think. Something like that. She sunk at Myersville in 1882.

Q. The Dixon, you say, was sunk at Myersville in 1882?

A. Yes, sir.

Q. After the sinking of the Kate Dixon what boat were you on?

A. On the Issaquena.

Q. On what trade was the Issaquena engaged?

A. Vicksburg and Greenville, two trips a week, that is four times a week, twice up and twice down.

Q. How many years were you on the Issaquena?

A. Five years.

Q. That carried you on the Issaquena until about 1887 then?

Objected to as leading.

A. I was on her for five years.

Q. For five years?

A. Yes, sir.

Q. After the Issaquena what boat were you on?

A. The Issaquena, well, I then got a boat called the Phil [fol. 471] Armour.

Q. In what trade was the Armour? In the trade between Vicksburg and Greenville?

A. Yes, sir.

Q. How long were you pilot on the Armour?

A. Not very long, for they got the Morning Star, and I was then on the Morning Star for about two years, running three trips a week to Greenville, in day light.

Q. How long were you on the Morning Star?

A. About two years.

Q. And you made three trips a week?

A. Yes, sir; day light trips, Vicksburg to Greenville.

Q. And after the Morning Star then?

A. After the Morning Star it was the Ruth. They got the Ruth and the Chattahootchie. They got the Ruth from the Lee Line, and then also had the Chattahootchie.

Q. How many years were you on the Ruth and the Chattahootchie?

A. I was on the Ruth about a year, I reckon.

Q. And how long were you on the Chattahootchie?

A. It was just from one boat to the other.

Q. You alternated between the boats?

A. Yes, sir.

[fol. 472] Q. Now, after those two boats, the Ruth and Chattahootchie?

A. Well, the Cattahootchie she burned and then they got the Annie Lauria.

Q. Where did the Annie Lauria Run, between Vicksburg and Greenville?

A. Yes, sir; three times a week. I was pilot on her for a while and then Captain.

Q. You were both pilot and Captain on the Annie Laurie?

A. No; pilot a while and then finally got to be captain.

Q. How long were you on the Annie Laurie?

A. I don't think that I was on her but three or four years,—something like that.

Q. After the Annie Laurie then what?

A. The Belle of the Bend.

Q. Where did the Belle of the Bend run?

A. Vicksburg to Greenville.

Q. How long were you on the Belle of the Bend?

A. I was on her from '98 up to the time that she laid up.

Q. Up until she laid up?

A. Yes, sir.

[fol. 473] Q. Now, as I understand your testimony, all of the boats that you were master and pilot upon were in the trade between Vicksburg and Greenville?

A. Yes, sir.

Q. And——

A. (Interrupting.) Here you are, right here. Here is a memorandum of when the Belle laid up.

Q. You have offered me a memorandum. The Belle of the Bend was laid up you say when?

A. She laid up in 1908.

Q. I refer you here to Sheet 17 of the Mississippi River Commission Maps, which have been offered in evidence as Exhibit C to the Bill of Complaint in this case, and I point to you the section of the river indicated on that map between a point indicated as Brunswick Landing on the south and Tennessee Landing on the north, and state whether or not the various boats which you have testified you worked upon as master or pilot had occasion to run up and down that stretch of the river, or whether they did run up and down that stretch of the river?

A. They ran up and down the river. You see the channel was right up and down the Mississippi shore at that time, and that was a long time ago since the river was up [fol. 474] there to the Tennessee, and there was a boat sunk up there called the Tom Foster.

Q. I point to you on that map an island indicated as Island No. 98. Please state whether or not the boats on which you acted as master or pilot during the whole of this time passed up and down by Island No. 98?

A. Yes, sir; passed to the west side of 98.

Q. In the discharge of your duty as a pilot state whether or not, as the case may be, it was your duty to observe and note changes in the islands, bars and the channels of the river?

A. Always. Always take note. I had a whole drawer full of books but I burned them all up, and I have not got but one left, and that is the last one I made. My wife said to burn them up, that I would not need them any more, and get rid of them.

Q. You did keep a memorandum?

A. No, I didn't keep no memorandum. I have it all in my head.

Q. You formerly kept it, you say, however?

A. Yes, sir.

Q. What became of Island 98?

A. It disappeared absolutely.

Q. Was any of it at all left?

[fol. 475] A. No, sir; not a bit.

Q. What was the occasion for it to disappear?

A. The caving banks. It started to cave at the head and just kept on chipping away and caved all away. In 1897 I run right over the top of the island with a loaded steamboat.

Q. Over the top of what?

A. Over the top of the place where 97 was.

Q. You mean 97 or 98?

A. Of 98—where 98 was.

Q. Was there any trees to indicate where that island was at that time?

A. No, sir; not at that time there was not.

Q. What became of them?

A. They just went to China, I reckon. That place was always a very close place in there, and when we ran down there with a raft or a barge or anything we had to flank that place because it was very narrow between Hopkins' tow head and Island 98.

Q. What do you mean by flanking?

A. We had to use that precaution then. That was while the island was there. But after the Island gave away we had no trouble. You go right on down the bend.

Q. Explain what a boat does in flanking?

A. Backs up—backs up in such a way that the current [fol. 476] goes up against her side and she goes flanking on down with her stern in the current, just by shoving her into the bend. That is for safety, flanking it.

Q. When Island 98, which you say disappeared, was in existence, where did the channel of the river run with reference to the island and Hopkins' Tow head you refer to?

A. Where the island was?

Q. Where the channel was?

A. It run to the west of the island when it was there.

Q. Which island?

A. Island 98.

Q. West of Island 98?

A. Yes, sir.

Q. With reference to Hopkins Island, or Hopkins towhead, did the channel run east or west of that?

A. Run east of it.

Q. East of that?

A. Yes, sir.

Q. The channel, as I understand your statement, run east of the Hopkins' Towhead and to the west of Island No. 98, is that right?

A. Yes, sir.

Q. And between the two?

A. Yes, sir.

Q. Was the disappearance of Island No. 98 gradual, slow, [fol. 477] or rapid?

A. It went away slow. Just kept on chipping off, chipping off.

Q. On which side of Island 98 did the caving take place, Captain?

A. On the outside—the west side.

Q. The west side?

A. Yes, sir.

Q. The west side of Island 98, as you say, chipped away,—as it chipped away, what changes, if any, took place on the Louisiana side of the stream?

A. Well, it filled up over there.

Q. State whether or not *furing* the process of the caving of Island 98 was it easy or difficult to land your boat there?

A. You could not land at all. I never did land at Island 98 in my life.

Q. Why could you not?

A. Because of the snags and the trees and things there. It was dangerous to land there.

Q. A boat could not land there?

A. No, sir. A boat could not land there without taking big chances on sinking.

Q. What do you mean by these snags and trees?

[fol. 478] A. Big timber in Island 98.

Q. Big timber on the island?

A. Yes, sir.

Q. How would they get into the river?

A. They caved in.

Q. And in '97 or '98 I understand you to say that the island entirely disappeared?

A. Yes, sir.

Q. And there was not a vest*a*ge of the island left, as I understand you, Captain?

A. Nothing left of it. If there was I ought to have seen it. I was running up and down there six times a week.

Q. Prior to the disappearance of Island 98 you state that the main channel of the Mississippi river was to the west of that island?

A. Yes, sir.

Q. What was between that island and the Mississippi shore on the east?

A. What was between there?

Q. Yes, sir; what was between there. What kind of a channel was there between Island 98 and the Mississippi shore?

[fol. 479] A. There was no channel there at that time.

Q. Any water at all?

A. Where—in between the island?

Q. And the Mississippi shore?

A. There was not no channel there until the island gave away.

Q. Was there a chute there?

A. There was a little chute up in there; yes, sir.

Q. What was the width of that chute?

A. Oh now, it was not very wide.

Q. Was it navigable for large boats?

A. No, sir.

Q. Could small boats go up there at any stage of the water?

A. Not far. It was all closed up at the head of it. You could land at the foot of it. You could land down at the foot of it. That is where the landing was, right at the foot of it,—Chotard Landing, they called it, at the foot of Island 98. Island 98 never was a very large island.

Q. In high water could boats go up that chute then, Captain?

By Mr. Henry: We object to that because he has gone over it once and it is just a repetition.

[fol. 480] A. Could go over the bank in high water. They could go over the bank or any where in high water.

Q. Did you ever go up between the island in any boat you ever operated on, and the Mississippi shore? Did you ever take your boat between the Island and the Mississippi shore, Captain?

A. Not that I ever knew of. I landed at a little place called Esalena. The foot of the island over there,—the foot of the island kept caving off where Purnell had a little place there. That all caved off.

Q. That is all.

Cross-examination.

By Mr. Butler:

Q. When did they first begin to use lights as pilots on the Mississippi river?

A. It was a long time ago, when I first came on the river.

Q. They had lights then?

A. They had a few. They did not have many, and we used a torch basket.

Q. What is a torch basket?

A. They never had electric lights. Had a torch basket.

[fol. 481] Q. I mean at the present time. You have lights, government lights?

A. Yes, sir.

Q. And you navigate largely by reference to those lights?

A. Not altogether.

Q. Not altogether, but largely?

A. Well, yes, sir; we go by them. Half the time those lights are out. There are other marks we go by. We don't depend on the lights because, as I said, half the time the lights are out.

Q. When did they first begin using the lights in that respect?

A. It has been so long now that I can hardly tell you.

Q. When you first went on the river?

A. Yes, sir; about the time that I first went on the river they began to put them out.

Q. Now, in addition to the lights was there not a book published, a pilot book?

A. A light house book?

Q. No; not a light house book. A pilot book. A book like this that I have here in my pocket, which gives you the lay of the river and the lay of the island, and so forth and [fol. 482] so on? Can you see without your glasses?

A. No; I never used that book at all.

Q. It was not published then?

A. Frank Caton, a pilot, made a book.

Q. Who was that—who was he?

A. He was a pilot on the Natchez. I never have seen it. He made one though.

Q. When was that printed?

A. I don't know. I could not tell you. It was so far back that it is hard to remember.

Q. Did you ever know about the Samuel Cummings' pilot book?

A. No, sir; I never learned mine from the books. I got mine out on the river and learned it from hard knocks.

Q. You mean that you looked to the river yourself for your own information?

A. Yes, sir; I kept a log of the river, a little log. I always kept a log of the river, just like this one which I have in my pocket. This is the last one I have, and it don't amount to anything much—it is for the last time that I was down there.

Q. You have not got a log of the river now that you made when you began acting as a pilot in 1880?

[fol. 483] A. No, sir; I burned them all up, as I told you.

Q. Do you know of anybody that has got a log of the river of this particular section?

A. No, sir; I do not. I don't know whether my nephew, Audrey Haynes, has got one or not.

Q. Where does your nephew, Audrey Haynes live?

A. He works for the government.

Q. Is he on the same section of the river?

A. I learned him the river. He is my nephew.

Q. I say, is he on the same section?

A. Yes, sir.

Q. Where is Mr. Haynes now?

A. Up the river.

Q. What is his post office address? I want to locate him, Captain?

A. He lives in Vicksburg.

Q. Do you know of anybody else that kept a log of the river?

A. No, sir; I always kept one myself. I don't know whether anybody else kept one. I know that some of the pilots did not. Most of them kept it in their heads,—most do, but I always kept a little memorandum when I worked down here, and I have always kept a little memorandum since I have been on the work up there.

By Mr. Henry:

[fol. 484] Q. When did you go to work for the government?

A. I think it was in 1912.

Recess until 2 o'clock P. M.

At two o'clock P. M. met pursuant to the above noted adjournment. All present as of this morning, and the cross-examination of Capt. Jos. V. De Lahunt was resumed by Mr. Butler.

By Mr. Butler:

Q. Capt. De Lahunt, where was the land which you knew as Hopkins's Island situated with reference to Island 98? In what direction?

A. West of 98.

Q. Immediately west or northwest?

A. West.

Q. How large an island was Island 98 when you first knew it, Captain?

A. It was not very large. Just nothing but a narrow strip.

Q. How long north and south?

A. A mile and a half long, something like that.

Q. At the time that you first knew Island No. 98 was there or not a chute that ran to the east of Island 98 opening both at the north end of the island and at the south end of the [fol. 485] island?

A. No, sir. There was a chute running to the left of Island No. 98, but it had to be extremely high water before you could go through there.

Q. That is the left, coming south?

A. Yes, sir; but that was not the river. It was just down to the left of that island there, just a little place running through there. There was not water enough to go through there only on a very high stage of the water.

Q. I believe you said that you did not, or that you never went to the east of Island 98 in your trips there?

A. I don't remember going to the east of it only when it was washed away.

Q. I mean while the island was in existence?

A. No, sir; I did not go to the east of it.

Q. What became of the land you knew as Hopkins' Island?

A. What became of it?

Q. Yes, sir; what became of Hopkins' Island?

A. Why, it was there when I left here,—the best part of it.

Q. In 1908?

A. In 1908.

Q. And you say that was to the west of Island 98, Cap-
[fol. 486] tain?

A. To the west of Island 98: yes, sir. I sunk one boat at Hopkins, on the head of 98, the Kate Dixon.

Q. I show you, Captain, a map of the Mississippi river, made on June 23, 1874, the original of which has been offered in evidence here as an exhibit.

A. I don't know a thing in the world about maps—not a thing in the world.

Q. Can you tell the Court whether or not Hopkins Island, at the time you first knew it, was situated with reference to Island 98 as shown on that map, or approximately so?

A. I can't tell a thing about maps. I don't know a thing in the world about maps—not a thing in the world.

Q. Was there a channel west of Hopkins Island when you first knew it?

A. No; no channel west of Hopkins Island. No, sir; no channel.

Q. The channel run between Hopkins' Island and Island 98 when you first knew it?

A. Yes, sir.

Q. Now, I show you a Mississippi Commission chart made in 1883, from a survey made in 1882, and years prior thereto, [fol. 487] and will ask you if you remember, at any time, where the main channel of the river ran to the west of Hopkins Island as shown on the map?

A. It never run there in my time. It run to the east of Hopkins Island.

Q. Was there another island north or northwest of Island 98 where the river at one time run to the east of it and later, in 1882 and 1883 ran to the west of it?

A. Was there another Island?

Q. Yes, sir?

A. The only island I knew of was the Hopkins tow head and Island 98.

Q. Now, this map I have here shows an island, the southern point of which is about the center of Island 98, and extends way on up here to the E. Foster place, with the channel on both sides. Do you remember that island?

A. No, sir.

Q. You don't remember that island?

A. No, sir.

Q. As shown on this map?

A. No, sir.

Q. I now show you a map here that has been offered in evidence as Exhibit BB to the testimony in this case, which [fol. 488] purports to show Hopkins Island as originally surveyed by the State of Louisiana, and also purports over here to show Island 98. Now, is that the land you knew as Hopkins' Island?

A. I can't tell anything about maps. I don't know a thing in the world about them.

Q. It was immediately west, you say?

A. What?

Q. Immediately west of Island 98?

A. Hopkins' Towhead was west of Island 98; yes, sir. But I can't tell a thing about maps. I never learned it that way. I know the channel of the river, but I can not tell you anything about maps.

Q. That was the relative position of it, was it?

A. I don't know a thing about that. I don't know a thing about maps.

Q. As I understand from your testimony, Hopkins Island never washed away as long as you were there? Is that your testimony?

A. While I was there not altogether it did not wash away; no, sir.

Q. And you were there until 1908, as I recall your testimony?

[fol. 489] A. Yes, sir; 1908.

By Mr. Butler: I believe that is all, Judge.

By Mr. Dale: That is all. You may stand aside, Captain.

(Witness excused.)

The complainant rests.

Whereupon the defendant then and there offered the following additional testimony:

[fol. 490] OFFERS IN EVIDENCE

By Mr. Creekmore: The defendant here offers in evidence Montgomery's map of East Carroll Parish, Louisiana, copyrighted November 1st, 1904, by Thomas F. Montgomery, Lake Providence, Louisiana.

By Mr. Dale: To which offering the complainant objects for the reason that there is no evidence that this is a map authorized by law, either of the United States or the State of Louisiana, and it is not certified to at all.

For the further reason it does not purport to be a survey of the Mississippi river, and does not purport to show sand bars or accretions, nor changes in the shore lines.

For the further reason that said map is not correct and it does not show whether it is merely a copy from other old maps, or whether it is made from actual surveys, and the surveyor who made it, if it was made by a surveyor, has not been examined and has not shown that it is a correct map.

For the further reason that most of these parish maps are not made from actual surveys, and this one does not seem to be an exception to the rule.

[fol. 491] By Mr. Creekmore: I desire to ask counsel, outside of the objections he has just made, and which are in the record, will you have any objections to having a photostatic copy of this map introduced instead of the map?

By Mr. Dale: No, sir; there is no objection to that whatever. We will be glad if you will furnish us a copy also.

By Mr. Creekmore: Yes, sir; we will furnish you a copy.

We now offer pages 1, 2 and 3 of "The Western Pilot," containing a chart of the Ohio and Mississippi rivers, from the Mouth of the Missouri river to the Gulf of Mexico, accompanied with directions for navigating the same, and "A Gazetteer or Description of the Towns on their Banks, Tributary Streams, Etc. Also a Variety of Mater Interesting to Travelers, and All Concerned in the Navigation of those Rivers, with a Table of Distances from Town to Town on all of the above Rivers."

"By Samuel Cummings, Cincinnati, Published by George Conclin, 1836."

Also pages 102 ans 103.

[fol. 492] By Mr. Dale: That is also objected to by the complainant for the reason there is no evidence that Samuel Cummings was a pilot or an engineer, and there is no evidence from what source he got his data or information. And the map of the Mississippi river shown on page 101 does not purport to be made from a survey of the river, or does not purport to have been made by a surveyor. Or is it a certified copy of a recognized map, and so far as the evidence shows it is made merely from cursory observation, without any attempt at accuracy or measurement, or distances. That the same is totally incompetent as evidence to establish the ownership of real estate, or the lines between two states.

With the exceptions noted there is no objection to a photostatic copy of the pages offered being substituted for the original.

By Mr. Creekmore: We ask that the photostatic copy of Montgomery's Map of East Carroll Parish, Louisiana, which already been offered in evidence be marked Exhibit V-2 to the defendant's testimony.

And that the photostatic copy of pages 1, 2 and 3, of the Western Pilot, heretofore offered in evidence by the [fol. 493] defendant, be marked Exhibits V-3, V-4 and V-5 respectively, and that the "The Western Pilot" be offered as a historical document and Ancient map.

An adjournment is here taken until 9 o'clock A. M. January 20, 1927.

[fol. 494] WILLIAM MILLER, colored, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Sharp:

Q. State your name?

A. William Miller.

Q. What is your age, William?

A. I will be fifty-two years old this coming May. I was born in 1875.

Q. Where did you live during the early years of your life?

A. Eustacia.

Q. Eustacia plantation?

A. Yes, sir.

Q. When did you first live on Eustacia Plantation?

A. My mother told me that from about two years old up until I was ten.

Q. During the time while you lived on Eustacia plantation did you ever know what is known as Island 98 over there in the river?

A. Yes, sir.

Q. Do you know who owned Eustacia plantation?

[fol. 495] A. Major Higgins.

Q. Where did that island lie with reference to Eustacia plantation or Maj. Higgin's plantation?

A. Right in front.

Q. You lived on Eustacia plantation until you were ten years old?

A. Yes, sir.

Q. How big an island was that at that time, if you remember, William?

A. Maybe about 250 acres, or something like that.

Q. Where did you go from Eustacia plantation?

A. Brunswick.

Q. Where is Brunswick?

A. Brunswick is in Warren county, about eight miles from there.

Q. Did you see the island frequently, or not, after you lived there?

A. Yes, sir.

Q. How long did you live down at Brunswick?

A. Ten years.

Q. Where did you go from Brunswick?

A. To Vicksburg.

Q. How long did you stay at Vicksburg?

A. I stayed at Vicksburg from '97 up until '16.

[fol. 496] Q. What were you doing during all of that time?

A. Steamboating every day. I have done that all my life around Vicksburg. From Vicksburg to Greenville.

Q. You steamboated from '97 until 1916 from Vicksburg to Greenville?

A. Yes, sir.

Q. What boats did you run on?

A. The Annie Laura, the Ruth, Chattahootchie, Belle of the Bend, Fall City, Ben Hur, Cardee and the Web Oliver.

Q. On your trips on these boats how often did you pass this Island 98?

A. Let me see. I passed it six times a week. We made three trips a week from Vicksburg. Yes, sir; six times a week. Three times up and three times back.

Q. Three up and three back?

A. Yes, sir.

Q. From 1885 or 1886, on up until 1916, you saw the island frequently?

A. Yes, sir.

Q. State whether or not that island is now where it always was—that part of the island that is there now?

By Mr. Brandon: I object to that as leading and suggestive of the answer desired.

[fol. 497] A. Yes, sir.

By Mr. Sharp:

Q. State whether or not Island 98 ever entirely washed away, or disappeared?

A. No, sir; it did not entirely wash away. The lower end all washed up. The upper end did not wash off.

Q. How much of the upper end did not wash off?

A. It seems to me like it was seventy-five or eighty acres.

Q. Did you see that island about 1916?

A. Yes, sir; I saw it this Sunday. I saw it Monday.

By the Commissioner:

Q. This last Monday?

A. Yes, sir; I pass it once or twice a week.

By Mr. Sharp:

Q. About what size is it now?

A. Well, maybe about three or four hundred acres. Maybe more than that now.

Q. You say that a part of it washed away and left about seventy-five or eighty acres on the north end?

A. Yes, sir.

Q. After the washing stopped did it go to building back on that island?

A. Yes, sir; it built back in some places.

[fol. 498] Q. It built back in some places?

A. Yes, sir.

Q. When you first knew that island on which side of the island was the main channel of the river on?

A. On the east side.

Q. The east side?

A. Yes, sir.

Q. Over next to the Mississippi shore?

A. Yes, sir.

Q. Did it ever change over on the west side?

A. Yes, sir.

Q. When did it change over there, if you remember about that?

A. To my memory it changed around there about 1912 or 1911.

Q. Did it ever run on the west side before that time that you know of?

A. Yes, sir.

Q. When?

A. In 1886 it was on the west side. You see that was nothing but a dry chute in there. We used to haul wood.

Q. From the island?

A. Yes, sir.

[fol. 499] Q. Did it ever get so boats could go on the east side before the river changed over on that side?

A. No, sir.

Q. What about high water time?

A. When it was high water,—high water in it the boats passed through it.

Q. Passed through the chute?

A. Yes, sir.

Q. Do you remember what year it was that it changed from the west side to the east side?

A. No, sir. From the west to the east?

Q. Yes?

A. No, sir; I can't remember that.

Q. You don't know what year that was?

A. No, sir.

Q. But it did finally change, I believe you say, from the west side over to the east side?

A. Yes, sir.

Q. And washed away Eustacia plantation?

A. Yes, sir.

Q. In 1910 or 1912, and finally changed back on the west side. Was that a quick change or a gradual change?

A. Kind of gradual. It was all done in high water.

Q. During high water it broke back through?

A. Yes, sir.

[fol. 500] Q. Did you ever know of anybody living on this island over there?

A. Yes, sir.

Q. Who was it that lived on there?

A. I know a man, Alex Mason. He lived at Vicksburg, and James Scruggs was the last man that lived there, to my memory.

Q. Do you know what year he lived there?

A. Yes, sir.

Q. When did he live there?

A. He was living there when we left there, and we left there in '86. What year he left there I don't know.

Q. Was any part of that island ever in cultivation that you know of?

A. Yes, sir.

Q. Do you remember when Major Higgins committed suicide over there?

A. Yes, sir; I lived on his place. I went over there to his house and looked at him.

Q. Where was the channel of the river at that time?

A. West.

Q. This part of the island left standing, was there any trees growing on that or not?

A. Yes, sir.

Q. What kind?

[fol. 501] A. Cottonwood and willow.

Q. That is all.

Cross-examination.

By Mr. Dale:

Q. What is your name?

A. William Miller.

Q. You are a colored man, are you?

A. Yes, sir.

Q. When did you say you were born?

A. In 1875.

Q. And you are now 51 years old?

A. I am fifty-one already.

Q. Now, where were you born?

A. Issaquena county.

Q. On what plantation?

A. Old Home Plantation.

Q. How far is that from the Higgins place?
A. About a mile and a half or maybe a mile and a quarter.
Q. On the river or back from the river?
A. Right on the river.
Q. About or below the Higgins place?
A. Below it.
Q. Above and below the Higgins place?
[fol. 502] A. Yes, sir.
Q. Who owned it?
A. Mr. Harmes, is all I know.
Q. You don't know of any other name for it than just the Old Home Place?
A. Yes, sir; they called it Chotard.
Q. Chotard?
A. Yes, sir.
Q. When did you move from Chotard to the Maj. Higgins place?
A. I can't remember. I was too small.
Q. You don't know when you moved from there?
A. No, sir; not from Chotard to Maj. Higgins. I was too small.
Q. Now, you can't recollect when you first went to the Maj. Higgins place?
A. No, sir.
Q. The first recollection you have you were living on Esutacia, which was the Higgins place?
A. Yes, sir.
Q. Did you know it by the name of Eustacia?
A. Yes, sir.
Q. About how old were you when you can first recollect?
A. Between seven and eight. Along '82 and '84. I re-
[fol. 503] member that year.
Q. In '82 and '84?
A. Yes, sir; and '83, I remember that.
Q. In 1882, 1883 and 1884. Can you recollect along there?
A. Yes, sir.
Q. When do you first recollect Island No. 98?
A. Somewhere along in '82.
Q. In 1882?
A. Yes, sir.
Q. When you first recollect Island No. 98 do you know what kind of timber was on it?

A. To my knowing there was nothing but cottonwood and willow.

Q. Did you ever go on it in 1882?

A. Yes, sir.

Q. When you were seven years old?

A. Yes, sir.

Q. Did you go by yourself or with somebody else when you went on it?

A. No, sir, us—just a gang of us children. Some days I would go by myself over to Scruggs' to get milk.

Q. How did you go?

A. Walked.

[fol. 504] Q. Could you walk from the main land across on to that?

A. I could walk over there.

Q. That was in low water?

A. Yes, sir; when the water was low there was no water in it.

Q. When the water got up high it got in the chute between the island and the bank, did it?

A. Yes, sir.

Q. What size was that island then?

A. It seemed like to me about like 250 acres, maybe. About like that.

Q. As far back as you can recollect somebody worked it—cultivated it?

A. To my best memory old man Scruggs was on it.

Q. Now, when was he there?

A. We left there in '86. We moved in '76 and left him on the Island.

Q. You moved away from there in '86?

A. Yes, sir.

Q. And left him on the island?

A. Yes, sir.

Q. You said something about Alex Mason. He lived there too?

[fol. 505] A. Yes, sir; but I don't remember him. My mother says that he lived there.

Q. You yourself can't recollect Alex Mason?

A. No, sir.

Q. And personally, you don't know that Alex Mason ever lived there?

A. No, sir; but I know Joseph Scruggs was living there because I went to his house.

Q. But you don't know personally anything about Alex Mason?

A. No, sir.

Q. In 1882 where did the steamboats run,—between the island and the bank or on the west side of that island towards the Louisiana shore?

A. The west side. They only came in the chute during times of high water.

Q. Dating your recollection from—from the time you can recollect up until 1882, that is, from the time that you can first recollect prior to 1882, as far as you know, had any steamboat run in through between the island and the bank?

A. Only in high water.

Q. They could not do that only in high water?

[fol. 506] A. No, sir; in low water a skiff could not get up in there.

Q. Now, were you still on Maj. Higgins place in 1882?

A. Yes, sir; was up there until '86.

Q. When did you leave Maj. Higgins' Place?

A. In '86.

Q. In '86 or '85?

A. In '86.

Q. You left there in '86?

A. Yes, sir.

Q. In 1886 you were ten years old, were you not?

A. Yes, sir.

Q. Or eleven?

A. Going on 11.

Q. You were ten going on 11?

A. Yes, sir.

Q. At the time you left the Maj. Higgins place?

A. Yes, sir.

Q. In 1886 when you left the Maj. Higgins place where did you go?

A. To Bruswick on Mr. Hamp Davis' place.

Q. Where is Brunswick located with reference to Maj. [fol. 507] Higgins place?

A. Brunswick is called about eight miles from Chotard, below.

Q. Eight miles down the river from Chotard?

A. Yes, sir.

Q. Is that in Warren county?

A. Yes, sir; in Warren county.

Q. How long did you live down there at Brunswick in Warren county?

A. Ten years.

Q. Then you lived there until 1896?

A. Yes, sir.

Q. During that time did you have occasion to go up to Maj. Higgins' plantation?

A. Every week. All my people stayed up there, and I was going backward and forward all during the week. Sunday was our big day there.

Q. Between 1882, the time that you can first recollect the island and 1896 when you used to go up to Maj. Higgins' place, did the island cave any?

A. It was not caving much th-n.

Q. It had not caved much up until 1896?

A. In '96?

Q. Yes?

[fol. 508] A. The biggest part of it was in '97.

Q. I did not ask about '97. Prior to 1896?

A. Yes, sir.

Q. Had the island caved or not?

A. It had caved some.

Q. Where did it cave?

A. The lower end.

Q. The inside, next to the chute, or on the outside?

A. The big caving was on the outside.

Q. On the outside?

A. Yes, sir.

Q. It caved on the lower end on the outside?

A. Yes, sir.

Q. Had it caved much on the lower end?

A. It caved a right smart on the lower end.

Q. Did the big trees fall in the river as it caved?

A. Sometimes it would.

Q. Now then, you lived at Brunswick until 1896?

A. Yes, sir.

Q. After 1896, where did you go when you left Brunswick?

A. Vicksburg.

Q. You went to Vicksburg?

A. Yes, sir.

[fol. 509] Q. How long did you stay in Vicksburg?

A. I stayed in Vicksburg from '97 up until '16.

Q. Up until 1916?

A. Yes, sir.

Q. After you left Brunswick, moved away from there and went to Vicksburg, you did not live up in that section any more?

A. No; I did not live at Brunswick any more.

Q. From the time you lived or the time that you *you* moved to Vicksburg.

A. No, sir; I did not live at Brunswick any more.

Q. And you moved to Vicksburg, and lived at Vicksburg until 1916?

A. Yes, sir.

Q. That's Vicksburg, Mississippi?

A. Yes, sir.

Q. Now, where did you go after 1916?

A. Up here where I am at now, Chotard. I moved back to Chotard.

Q. When you moved from Vicksburg in 1916 where did you move to?

A. Moved back to Chotard.

[fol. 510] Q. Is Chotard a place on the river?

A. Yes, sir.

Q. Marked Chotard Landing?

A. Yes, sir.

Q. Where is that with reference to Maj. Higgins' place, south or north?

A. South of Maj. Higgins' place, Chotard is.

Q. After you went to the Chotard place in 1916 how long did you stay there? How long did you remain there after you went there?

A. Three years.

Q. When did you leave there?

A. I left Chotard in '24—'24 or '25, one. I moved from there to Dumbarton.

Q. I thought you said you went there in 1916?

A. I did.

Q. And only remained three years?

A. Three years.

Q. That would be in 1919, wouldn't it?

A. Yes, sir; 1919. I went to Dumbarton. That is a place called Shilo Landing.

Q. That is on the Mississippi river?

[fol. 511] A. Yes, sir.

Q. Where is that with reference to Chotard, north or south?

A. North of Chotard.

Q. How far north of Chotard?

A. About four and a half miles or five miles, maybe.

Q. What did you call that place?

A. Dumbarton.

Q. And how long did you stay at Dumbarton?

A. About four years.

Q. Is that the place that is owned by Mr. Foster?

A. No, sir; that was owned by Richardson & May, of New Orleans.

Q. You stayed at Dumbarton until 1924, did you?

A. Yes, sir.

Q. When you left Dumbarton where did you go?

A. I moved to a place called Five Mile Lake.

Q. Where is Five Mile Lake?

A. Right back of Dumbarton.

Q. Back away from the river?

A. Yes, sir.

Q. How long did you stay at Five Mile Lake?

A. One year.

Q. How long did you say?

[fol. 512] A. One year.

Q. Where did you go then?

A. Talullah. That is about ten miles north of Dumbarton.

Q. Up the Mississippi river?

A. Yes, sir; and right on the river.

Q. On the river?

A. Yes, sir; at a landing they call Fiddler.

Q. How long did you stay there?

A. One year.

Q. When did you move from there?

A. This year.

Q. In 1827?

A. Yes, sir.

Q. Where are you located now?

A. With Dr. Heath.

Q. Where is that?

A. Dr. Heath stays on Shilo, but he has got a place above Fiddler.

Q. How far above Chotard is the place you live now?

A. About ten or twelve miles, I guess. Maybe more than that.

Q. Have you ever worked in the field any?

A. Yes, sir.

[fol. 513] Q. You farm?

A. Yes, sir.

Q. Where?

A. Eustacia and Brunswick.

Q. Eustacia was Maj. Higgins' place?

A. Yes, sir; I was less than ten years old.

Q. You worked on a farm when you were ten years old?

A. Yes, sir.

Q. And the next place you went to was where?

A. Brunswick.

Q. That is how far below Maj. Higgins' place—Brunswick?

A. About eight miles.

Q. And how far below Island 98 is Brunswick?

A. How far below?

Q. How far below Island 98 is Brunswick, the place you were at up until '96?

A. It is eight miles.

Q. About eight miles below Island 98?

A. Yes, sir; Brunswick is.

Q. Now, during the ten years from '86 what did you do?

A. Farm.

Q. The whole time?

[fol. 514] A. Yes, sir.

Q. And you never went on the river until after 1896?

A. I run the river in '97.

Q. You went on the river in '97?

A. Yes, sir.

Q. Well, you never went on the river at all until after you went to Vicksburg?

A. No, sir.

Q. Did you farm any of the time that you were running on the steamboats?

A. No, sir.

Q. When you went to Vicksburg in 1897 how long did you stay there?

A. I stayed on the river from '97 till '16.

Q. From 1897 you stayed on the river until 1916?

A. Yes, sir.

Q. Running out of Vicksburg?

A. Yes, sir.

Q. When you first recollect Island 98 you say the channel of the river was on the west?

A. Yes, sir.

Q. On the west of Island 98?

A. Yes, sir.

[fol. 515] Q. And between Island 98 and the Louisiana shore?

A. Yes, sir.

Q. Now, you say that it changed and came on the side across Island 98, the Mississippi side of Island 98?

A. Yes, sir; for awhile it did.

Q. You say for awhile?

A. Yes, sir.

Q. At what time did that change take place?

A. I can't really remember the year, but to my memory I think it was somewhere in 1912 or 1911.

Q. In 1912 or 1911?

A. Yes, sir.

Q. Now then, you mean that it was in '12 or '11 that the change took place in the river?

A. Yes, sir.

Q. Is that the time that the river broke through and cut off and left off a big lot of land?

A. Yes, sir; it goes around by the Louisiana shore then.

Q. The change that you are talking about was when the river cut through that piece and went over by the Louisiana shore?

A. Yes, sir.

Q. That is the only time? I understood you to say awhile [fol. 516] ago that at some period the Mississippi river run between Island 98—some period after '86, the Mississippi river run between Island 98 and the Mississippi shore?

A. I said during the high water.

Q. The channel never did go in there?

A. No, sir.

Q. That was just during high water?

A. Yes, sir.

Q. All that time you are talking about—during all that period, during low water, you could walk across the island?

A. Yes, sir.

Q. You could do that all along?

A. Yes, sir.

Q. And it never did get so during low water that you could not walk across from the Mississippi shore to the island?

A. No, sir.

Q. So the Mississippi packets, the boats, as far as you know, never did run in between the island and the Mississippi shore?

A. No, sir.

Q. And the only boat that came in there was a little boat like the Issaquena, and those smaller boats?

A. Yes, sir.

[fol. 517] Q. And that was during high water?

A. Yes, sir.

Q. They could only run during high water?

A. Yes, sir.

Q. They could not run in there except during high water, according to your recollection? Is that true?

A. Yes, sir; and during low water they landed at the head of the island.

Q. The channel of the river never was between the island—the main channel of the river for the big steamboats never did go between the island and the Mississippi shore?

A. Only during high water time.

Q. Now, you say that you hauled wood from the island?

A. Yes, sir.

Q. You hauled it across that channel?

A. Yes, sir; across that chute.

Q. Do you recollect when that was, now?

A. About '85, along there.

Q. Along about '85 you hauled wood across there to the Mississippi shore?

A. Yes, sir.

Q. Now, when you were talking about the channel chang-
[fols. 518 & 519] ing back, you are talking about 1911 and 1912, when the river cut through?

A. Yes, sir.

Q. Is that the only change back that you know about?

A. Yes, sir; all that I can remember.

Q. There was no other change back except that?

A. No.

Q. Now, you were living in Vicksburg from 1897 to 1916. Then you were in Vicksburg and running the river at the time of that cut-off?

A. Yes, sir.

Q. Did you call it the cut-off?

A. Yes, sir; I used to call it the cut off.

Q. How long was it in making through there? Did it go through pretty quick?

A. No, sir.

Q. Did it start one year and finish up the next?

A. Yes, sir; that was the way it was done.

Q. After that cut off had gone through there thoroughly did the boats stop running around the old channel and go through the cut off?

A. Yes, sir.

Q. Do you recollect at about what time they started

[Printer's Note.—Side folio page 519 missing.]

[fol. 520] immaterial. It calls for his understanding, and he has no knowledge of the title of that land. I just want to get the objection in the record.

By the Commissioner:

Q. Go ahead and answer the question.

By Mr. Brandon:

Q. Go ahead and answer the question? Do you know whether it was in Mississippi or Louisiana?

A. Mississippi is my idea.

Q. Across the other side of Mississippi you thought was Louisiana?

A. Yes, sir.

Q. Do you know what that was called over there opposite the island?

A. They used to call it Willow Point, I believe.

Q. Was there a tow head over there on the other side of the river called Newman's Tow Head?

A. Yes, sir.

Q. You knew Newman's Tow Head?

A. Yes, sir.

Q. That was higher than the balance of the bar, was it?

A. Yes, sir.

[fol. 521] Q. Was that a long bar there at Willow Point?

A. A pretty long bar.

Q. How far would you say that bar extended out, before the cut off, from the Louisiana shore? What would you estimate it? Some four or five miles?

A. About five miles.

Q. That bar extended out from the Louisiana shore plumb out to the channel of the river?

A. Yes, sir.

Q. And the Newman Tow Head was right there at the end of that bar on the Louisiana shore?

A. Yes, sir.

Q. You heard that called Newman's Tow Head often, did you?

A. Yes, sir.

Q. And you are perfectly familiar with the fact that the Newman Tow Head, at that time, was over on the Louisiana side?

A. Yes, sir. I used to put off freight there.

Q. The Newman Tow Head was higher than the balance of the bar?

A. Yes, sir.

Q. There was bigger timber on it than there was on the balance of the tow head—do you know where that low place [fol. 522] back behind Newman's Tow Head was?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Now, what was your position on those steamboats?

A. Captain of the watch and deck hand sometimes.

Q. And as a deck hand?

A. I was deck hand off and on fir fourteen or fifteen years.

Q. Deck hand off and on all the time?

A. Yes, sir.

Q. What was your duty as deck hand on all of those steamers?

A. To get out freight.

Q. You did not have to look out for sand bars and islands and all of those sort of things?

A. No, sir; no more than——

Q. (Interposing.) That was not a part of your duty?

A. No, sir; only when the pilot would ring the bell to measure the water.

Q. Measure the water when the Captain would tell you?

A. Yes, sir.

[fol. 523] Q. Did you know Capt. De Lahunt?

A. Yes, sir; I know Mr. John De Lahunt.

Q. Do you know him well?

A. Yes, sir.

Q. Do you know whether he was the pilot on any of those boats that you were on?

A. Yes, sir; the Ruth, Chattahootchie and Belle of the Bend.

Q. Practically all of the boats that you have mentioned?

A. Yes, sir.

Q. He was pilot on them?

A. Yes, sir.

Q. Will, can you read and write?

A. A little.

Q. What grade did you get to in school?

A. Never was no further than the Fourth.

Q. In fact, you went to work when you were ten years old, and worked in the fields over there when you were ten years old and after?

A. Yes, sir.

Q. And you did not have much chance to go to school?

A. No, sir.

[fol. 524] Q. During that period of time there were not many schools, were there?

A. No, sir.

Q. You did not have much opportunity to go to school?

A. No, sir.

Q. Did you live a great distance from the school?
A. Yes, sir.
Q. How far?
A. About six miles.
Q. Now, I understood you to say that the last that you knew of Mr. Scruggs—I don't know whether I am correct or not—was in 1886?
A. Yes, sir; I left him there.
Q. You left him there?
A. Yes, sir.
Q. And went to Vicksburg?
A. Yes, sir.
Q. And left Scruggs on the island?
A. Yes, sir, what year he moved I don't know.
Q. You don't know when he moved from there?
A. No, sir.
Q. And you don't know where Scruggs is now, do you?,
A. No, sir; I do not. He had a little place down there—[fol. 525] down there below Chotard, but whether he is there now or not I don't know. Whether he is there, or sold his place or something, I don't know. I don't know what has become of him.
Q. That is all.

(Witness excused.)

By Mr. Creekmore: The defendant rests, reserving the right to introduce such documentary testimony, if any, that it may deem necessary to meet the objections to the testimony already offered.

By Mr. Dale: It is agreed by complainant that the objection made on page 277 of Volume 2 of the testimony to the Mississippi Levee District Map of Albermarle Bend, L-B 567-572 showing changes in the channel from 1882 to 1906 by C. H. West, Chief Engineer, dated at Greenville, Mississippi, April 5th 1906, as Exhibit No. 5, to the testimony of this witness is withdrawn.

No further evidence is to be introduced by either side, except either side has the right to authenticate any evidence introduced, if they can do so, or otherwise make competent record evidence already offered.

[fol. 526] By Mr. Creekmore: It is stipulated between counsel for Louisiana and Mississippi that all Acts of Congress relating to the organization both as states and territories, of Louisiana and Mississippi, and all constitutional provisions and statutory provisions of each state as to the boundaries of their respective states, shall be considered as in evidence, without formal offer thereof, and may be so treated by the Court, and referred to by the respective parties in the presentation of the cause.

CERTIFICATE OF SHORTHAND REPORTER

I, J. L. Barton, the official reporter who reported the proceedings and testimony on the hearing of the above styled and numbered cause, before Hon. Jack Thompson, Commissioner, hereby certify that the above and foregoing is a full, true, complete and correct transcript of the proceedings and testimony, both oral and documentary, offered and introduced during the hearing thereof; also of all exceptions taken and noted, and I now certify the foregoing to be such transcript.

In testimony whereof, I have hereunto signed my name, at Jackson, Mississippi, this the 28th day of January, 1927.

J. L. Barton, Shorthand Reporter.